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Influence of Jeremy Bentham on
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The Influence of Jeremy Bentham on English Democratic Development

BY

HILDA G. LUNDIN, PH. D.

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EDITOR'S INTRODUCTION

In this monograph Dr. Lundin has undertaken to trace Jeremy Bentham's influence on the political, legal, and social development of England. Only very incidentally is she concerned with the remoter reaches of his influence in other lands although she makes it clear that his active and fertile mind received constant inspiration from his study of the great experiment in popular government that was being carried on in America. Indeed many of the ideals of political democracy for which Bentham strove were already incorporated in the form of statutes and constitutions in the United States. Therefore it is not surprising that his doctrines were chiefly influential in America in the field of juristic science.

Judge John F. Dillon has pointed out that important changes in modes of judicial procedure and conceptions of legal education in America had their inception in the writings of this "teacher of teachers." To men imbued with Bentham's ideas must also be ascribed the extent to which codes of civil and criminal procedure have been adopted throughout this country. The influence of his doctrines on the distinguished American jurist Edward Livingston is significant in this connection. Pecuniary difficulties caused Livingston to leave his ancestral home in New York in 1804 and take up his residence in New Orleans, then recently acquired from France as a part of Louisiana Territory. The legal system of the territory was based upon Roman, French and Spanish law; and annexation by the United States necessitated the introduction of trial by jury and other features of the English common law. Livingston was appointed by the legislature to draw up a provisional code of judicial procedure based mainly on the existing law of the territory; and this code was adopted by the legislature in 1805. Sixteen years later he was

chosen by the legislature to draft a new code of criminal law and procedure for the state. In the execution of this task he prepared a comprehensive Code of Crimes and Punishments, of Procedure, of Evidence, and of Reform and Prison Discipline. Each code was accompanied with an elaborate prefatory report; and although the fruits of his labors were not enacted by the Louisiana legislature, they were published widespread throughout America and Europe. Chancellor Kent declared that Livingston had "done more in giving precision, specification, accuracy, and moderation to the system of crimes and punishment than any other legislator of the age . . . "

In an interesting correspondence with Bentham in 1829, Livingston acknowledged that he had received his first impulse to the preparation of a comprehensive system of penal legislation from Bentham's works, which had appeared in the French edition of Dumont in 1802. "The perusal of your works," wrote Livingston to Bentham, "first gave method to my ideas, and taught me to consider legislation as a science governed by certain principles, applicable to all its different branches, instead of an occasional exercise of its powers, called forth only on particular occasions without relation to or connection with each other." Livingston's labors earned for him Sir Henry Maine's encomium of "the first legal genius of modern times."

Dr. Lundin's monograph was originally prepared under the direction of Professor Harry Grant Plum of the Department of History and has been revised for publication in the present series.

ARTHUR M. SCHLESINGER.

CHAPTER I

JEREMY BENTHAM: A BRIEF SKETCH OF HIS LIFE AND WORKS

Jeremy Bentham lived during the last half of the eighteenth century and the first third of the nineteenth century, a period during which the ideas generated by the French Revolution were causing governmental reaction in England. Bentham was born February 15, 1748 in a well-to-do, middle-class home located on Red Lion street, Houndsditch, London. His mother, Alicia Grove Bentham, the daughter of an Andover tradesman, was a gentle, refined lady. His father, Jeremiah Bentham, was a scrivener and clerk to the Worshipful Company of Scriveners. As a child, Jeremy was of delicate health, naturally serious and studious. Very early, brilliant mental power, aptitude for learning, and original thinking were manifested. Anecdotes of his babyhood and childhood, illustrative of unusual precocity, are numerous and interesting.¹ Latin and Greek he learned upon his father's knee, beginning their study at the age of three years.² When he was but six or seven years old a Frenchman, La Combe, came to live in the home as his private tutor.³ The child easily and quickly learned the French language, and soon read, with keen delight, Fenelon's *Telemachus* in the original. He was so deeply impressed by this book that it influenced all his later life. Referring to its reading from the plane of mature years he stated that the awakening of his moral life was to be credited to it and he also claimed that the first dawning in his mind of the principles of utility might be traced to it.⁴ Reading was always a pleasure for the boy, but prior to La Combe's coming his parents objected to the reading of books that afforded amusement. Parental disapproval being overcome, Jeremy read many books that indicate for one so young a remarkable range of interest and intellectual

¹Bowring, *The Works of Jeremy Bentham*, X, p. 7; Atkinson, *Jeremy Bentham*, pp 9ff.

²Montague, *Bentham's Fragment on Government*, p. 1.

³Bowring, *op. cit.*, X, p. 9.

⁴*Ibid.*, X, p. 10.

development. Among them were Burnet's *Theory of the Earth*, Mandeville's *Fable of the Bees*, Cave's *Lives of the Apostles*, Stow's *Chronicles*, Plutarch's *Lives*, Richardson's *Clarissa Harlow*, Swift's *Gulliver's Travels*, and Voltaire's *Life of Charles XII* and *Candide*.⁵ Due to his vivid imagination, Jeremy usually visualized himself as the hero of the book, lived among the characters portrayed, and longed to aid the unfortunate ones.

In the year 1755, when he was but a little past seven years of age, Jeremy Bentham entered Westminster School. Physically he was not able to engage in the usual sports. Sensitive in the extreme he could not brook the rude actions of the other boys. The teachers being deficient in ability, idle, and indifferent were not inspiring. On account of these conditions the school was always remembered by Bentham as a wretched place for instruction in few useful things.⁶ Studious and tractable, he performed the tasks assigned to him in such manner as never to suffer punishment from his teachers. He made rapid progress, having been well-grounded in the languages before entering Westminster School, and was prepared at the youthful age of twelve to enroll in Oxford University.

Upon matriculation day at Oxford a real and grievous trouble presented itself to Bentham in the requirement that the Thirty-nine Articles be signed. Young as he was he refused to sign the document with whose contents he was not fully acquainted. After he had carefully examined the Articles he said: "In some of them no meaning at all could I find; in others, no meaning but one which, in my eyes, was but too plainly irreconcilable either to reason or to scripture. Communicating my distress to some of my fellow collegiates, I found them sharers in it. Upon inquiry it was found that among the fellows of the college there was one, to whose office it belonged, among other things, to remove all such scruples. We repaired to him with fear and trembling. His answer was cold; and the substance of it was—that it was not for uninformed youths, such as we, to presume to set up our private judgments against a public one formed by some of the holiest as well as best and wisest men that ever lived. I signed: but by the view I found myself forced to take of the whole busi-

⁵ *Ibid.*, X, p. 22; Montague, *op. cit.*, p. 2; Stephen, *The English Utilitarians*, 1, p. 171; Atkinson, *op. cit.*, p. 12; *Biographical Dictionary*, IV, p. 269.

⁶ Bowring, *op. cit.*, X, pp. 30ff.

ness, such an impression was made, as will never depart from me but with life.''⁷ Writing many years after of this Bentham stated that the only lesson a young man learns from such a requirement is a lesson of perjury.⁸

Bentham's tutor at Oxford was a cross, gloomy man named Jefferson. He required his pupil to read Tully's *Orations* which he had memorized before entering the University. Other studies, as geography, logic, and philosophy, were presented in such a manner as to be of little value, for, generally speaking, the tutors and the professors at Oxford were incapable and inert, passing their mornings in dull meaningless routine and their evenings in card-playing. The profligacy of some of the teachers and the moroseness and insipidity of others were wholly at variance with the ideas of Bentham.⁹ Being undersized Bentham was frequently teased by his more robust mates and was constantly annoyed by their unkind treatment. He took little part in the fishing and the hunting diversions offered during University days, for they were not pleasures to him. Furthermore, due to his father's ideas, the boy's clothing was so different from that of the other students that he was made to feel extremely uncomfortable.¹⁰ Completing the prescribed course, Bentham received his degree in 1763.

The elder Bentham had destined Jeremy for the profession of law as the foundation upon which he was to rise to advanced position in his country. The ambitious parent had concluded that the son who surpassed schoolmates and classmates in educational attainments would be capable of serving, worthily and honorably, his country in a public career.¹¹ The youth knew his father's plans for him and was not opposed to the work mapped out. Therefore, soon after graduating he began to live at Lincoln's Inn. However, as he studied and observed, he began to display a tendency toward untrammelled thinking that he was powerless to check had he desired to do so.

In order to understand Bentham's intellectual development while at Lincoln's Inn Field's, mention must be made of the

⁷ *Ibid.*, X, p. 37.

⁸ *Ibid.*, II, p. 210.

⁹ *Ibid.*, X, pp. 37ff.

¹⁰ *Ibid.*, X, pp. 38ff.

¹¹ Stephen, *The English Utilitarians*, I, p. 174.

influence made upon his mind by the writings of Helvetius, Hume, and Priestly.¹² These three men belonged to the eighteenth century but in their writings they advanced ideas in morals and philosophy peculiar to themselves and in advance of their time. They displayed a new understanding of existing social conditions and sought to comprehend the desires and the aspirations of mankind. They urged the consideration of one individual for another upon the basis of utility.

Helvetius (1715-1771), a Frenchman, versatile and keen, wrote both poetry and prose. In a poem entitled *La Bonheur* he developed the idea that the only way to obtain true happiness is to make the interest of one the interest of all.¹³ Helvetius explained further that self-interest is the sole means of judgment, action, and affection because it is founded on the love of pleasure and the fear of pain; that self-sacrifice is endured because the sensation of pleasure resulting is greater than the pain accompanying sacrifice. David Hume (1711-1776) emphasized the need of studying human nature as such, as the only means of determining the principles which regulate understanding, excite sentiments, and cause blame or praise of conduct.¹⁴ Priestley (1733-1804), a dissenting preacher, published in 1768 an *Essay on Government* in which he stated "the good and happiness of the members, that is the majority of the members, of any state, is the great standard by which everything relating to that state must finally be determined." Two years after its publication the essay fell into the hands of Bentham, who upon completing the reading exclaimed "Eureka" with as much vim as the mathematician of old. The reading of this essay caused Bentham to say: "Priestley was the first (unless it was Beccaria) who taught my lips to pronounce this sacred truth; that the greatest happiness of the greatest number is the foundation of morals and legislation."¹⁵ Thus at the early age of twenty-two Bentham fixed upon the phrase, "the greatest happiness of the greatest

¹² *Edinburgh Review*, LXXVIII, pp. 469-474.

¹³ Thilly, *The History of Philosophy*, p. 332. This thought was not new with Helvetius for Joseph Butler (1692-1752) had set forth the claim that it is as natural for an individual to seek the good of his neighbor as his own happiness; and Francis Hutcheson (1694-1747) is credited with originating the phrase "the greatest happiness of the greatest number."

¹⁴ *Ibid.*, pp. 346ff.

¹⁵ Bowring, *op. cit.*, X, p. 142.

number," as the fundamental principle of his reasoning.

The young man living at Lincoln's Inn perceived that the ethics of the legal profession were of a low standard. Entirely incompatible with his own sense of justice were the practices of the professional lawyers there observed. He could not suffer himself to be a lawyer of such ilk as England then had. This was clearly shown by his advising the first litigants who came to him to settle their differences and so avoid costs.¹⁷ Preventing court proceedings was not calculated to build up the career that the father had planned for the son.

As a result of listening to Blackstone's lectures Bentham wrote *The Fragment on Government* and published it anonymously in 1776. In order to lessen his father's disappointment in him, Jeremy told him what he had been writing, exacting at the same time a pledge of secrecy. Upon publication its authorship became the subject of much discussion, Mansfield, Dunning and Camden being named as the writer; the book sold readily. Hearing that the names of such celebrities were being connected with the essay, the elder Bentham broke his promise, and revealed the name of the author. Then because the writer was no one of prominence the sale of the book stopped. However, as a benefit to the young writer, it brought to his Lincoln's Inn garret a visitor from England's peerage, Lord Shelburne,¹⁸ From the initial meeting of these two men in 1781 a friendship of vital worth to both was formed. Soon Shelburne extended to the obscure writer an invitation to make a long visit at his home Bowood. Acceptance of the invitation proved to be Bentham's introduction to a delightful and notable company. Prior to this visit *The Fragment's* author had met with all kinds of disappointments and rebukes; but the geniality and kindness of Lord Shelburne raised him from humiliation and encouraged him to go forward with the schemes for mankind's advancement upon which he had already begun to think.¹⁹ Guests met at Bowood during his first visit (1781) were Lord Camden, the Younger Pitt, and Dunning. At a later visit (1788) he met Romilly and Dumont, both of whom became his warm friends.

¹⁷ *Ibid.*, X, p. 51.

¹⁸ *Ibid.*, I, p. 248.

¹⁹ *Ibid.*, X, p. 115.

Atkinson, *op. cit.*, p. 46.

It is as the author of many manuscripts, as the compiler of really great works upon legislation, as a constant agitator for reforms in various lines that Bentham busied himself throughout his long lifetime. During a visit to Russia made from 1785 to 1788 he wrote an essay entitled *Defence of Usury*, which, "a gem of the finest water," has been considered the best treatise on the subject.²⁰ At this time, too, a scheme for prison reform began to receive Bentham's attention and upon his return to England he devoted time, means, and unwonted energy to carrying it out.

The year 1789 is noteworthy because of the publication of *The Introduction to the Principles of Morals and Legislation*. The manuscript of this work was printed as early as 1780, but Bentham intended to withhold it from the public until the larger work he had in mind should be completed. His friend Wilson influenced him to have it published because of the issuing of Paley's *Principles of Moral and Political Philosophy*. Wilson said Paley's book contained such close similarity to Bentham's ideas that it seemed as if the author might have read Bentham's manuscript. Wilson was fearful lest later publication by Bentham should give rise to the charge of borrowing ideas from Paley.²¹

Bentham lived from 1788 to 1792 at an obscure farm place near Hendon, four miles beyond Highgate.²² In this retired place he lived a sort of hermit life, seeing nobody, reading nothing, and writing books that nobody read.²³ Upon his father's death in 1792 Jeremy Bentham inherited the home in Queen's Square Place, Westminster, and he established himself there permanently. Henceforth he continued his activities in behalf of reform in a pleasing environment.

Dumont, scholarly and capable, succeeded in obtaining Bentham's permission to edit his works, and in 1802, he brought out in the French language three volumes which indicate the greatness of Bentham's field of interest at that time. Atkinson says: "Many a salutary modification of our system of jurisprudence may be traced to ideas enshrined and developed in these

²⁰ Bowring, *op. cit.*, X, pp. 176ff.

Atkinson, *op. cit.*, p. 83.

²¹ Bowring, *op. cit.*, X, pp. 163ff.

²² *Ibid.*, X, p. 248, p. 323.

²³ Atkinson, *op. cit.*, p. 112.

volumes."²⁴ The editor, Dumont, said that the plans developed in *Traites de Legislation* are applicable to a monarchy or a republic; that the rulers are urged to "Study the remedy for the ills that afflict your people."²⁵

Chrestomathia is the title Bentham gave to two volumes begun in 1816. The name made up of two Greek words signifies "conducive to useful learning." These two volumes, presenting Bentham's scheme for education, developed a system quite different from that employed in the English schools. In natural, pleasing surroundings, through the direction of competent teachers, *Chrestomathia* aimed at a broad, useful development of mental ability that would fit the adult for an enlarged field of activity. It was a complete system of coördinated subjects and plans. "The actual curriculum proposed for the higher Lancasterian schools was largely borrowed from it."²⁶

The *Constitutional Code*, which is the most complete, the most comprehensive, the most mature of all Bentham's works, was prepared during the years from 1820 to 1832. Its aim was to set forth a rational constitution and a rational system of legislation harmonious with the doctrine of the "greatest happiness of the greatest number." The English reformers were deeply impressed by it for they recognized the labor and the skill requisite to produce it, and also understood that there was real worth in the code.

An extract from the *Westminster Review* under date of 1830 conveys in well-worded terms the place conceded to the indefatigable writer. "A few years ago Jeremy Bentham was in Paris. Never did a noble countenance, or a more venerable head, present to the eye the material type of loftier virtues or a purer soul; nor was so prodigious a reputation ever more justly merited. Bentham should not only be regarded as one of the profoundest lawyers that ever lived, but as one of those philosophers, who have done most towards the enlightening of the human race and for the advancement of liberty in his own times."²⁷

Bentham did not especially concern himself with politics during the first half of his life for he was not a party man.²⁸ The

²⁴ *Ibid.*, p. 138.

²⁵ *Ibid.*, p. 138.

²⁶ *Ibid.*, p. 173, note.

²⁷ *Westminster Review*, XIV, (1837), p. 354.

²⁸ Atkinson, *op. cit.*, p. 28.

friendship of Lord Shelburne led him to give attention to politics and in 1790 he had a strong desire to become a member of Parliament. This arose from a misunderstanding on his part, for Bentham claimed, without warrant, that Shelburne had caused him to expect one of the Shelburns family places.²⁹ At the age of twenty-six Bentham refers to himself as being one whose love for his country should be witness for him against misruling men.³⁰ At the age of fifty-four he had personal acquaintance with many eminent politicians and philanthropists.

A development of democratic views is first evidenced in his *Draught of a Code for the Organization of a Judicial Establishment*, published in 1790. The influence of the French Revolution upon him is made plain by Macaulay who wrote of Bentham as an "illustrious conservative reformer."³¹ In the years prior to 1809 Bentham reached the conclusion that there was great need for reform in Parliament and at the age of sixty he began to give active support to such reform.³² At this time he was widely known. Governmental authorities in Russia, Spain, France, Germany and America advocated the employment of Benthamic doctrines.³³ "Even in England he is often mentioned in books and in Parliament."³⁴ "Meantime I am here scribbling on in my hermitage, never seeing anybody but for some special reason, always bearing relation to the service of mankind."³⁵

Growing into a closer contact with English politics, Bentham may be classified not as a Tory, nor a Jacobin, nor a paralyzed Whig, but as a philanthropic agitator.³⁶ Hence he became a radical reformer and propagandist. By 1818 his influence in public affairs became important through the efforts of Romilly, Mill, Wilson, and others who carried to the outer world the philosophizing of Bentham's study. Through an extensive correspondence his influence reached European and American countries from which in return came letters of gratitude and admiration.³⁷ As the movement for reform progressed, the

²⁹ Bowring, *op. cit.*, X, p. 229.

³⁰ *Ibid.*, X, p. 72.

³¹ Atkinson, *op. cit.*, p. 104.

³² Bowring, *op. cit.*, III, p. 435.

³³ Stephen, *op. cit.*, I, pp. 209ff.

³⁴ *Ibid.*, I, p. 210.

³⁵ Bowring, *op. cit.*, X, p. 458.

³⁶ Stephen, *op. cit.*, I, p. 210.

³⁷ Bowring, *op. cit.*, X, 539.

"utilitarians" organized and entered the field of politics as a distinct body. Needing an organ for the dissemination of their ideas, the *Westminster Review* was started and Bentham financed it.³⁸

Bentham, who is to be credited with great ability, with sensitive understanding of human nature, with remarkable knowledge of the wrongs in existing legislation, and far reaching schemes for constructive reform, was not without his limitations. Commenting on these limitations Sidgwick mentions "his exaggerated reliance on his own method, his ignorant contempt for the past, and his intolerant misinterpretation of all that opposed him in the present" as salient defects.³⁹ Again, Bentham regarded nations and men as being mechanical. The former were to him simply aggregates of men, the latter machines capable of being regulated much as a watch is regulated. Had he understood that nations are not aggregates of men but complex organisms in which each member receives as he gives of himself to the whole, he would have enlarged his achievement.⁴⁰ Because romance entered but slightly into his life, and because much of his time was spent strenuously writing in comparative retirement, he lacked now and then in suavity of statement. This is evidenced by the replies he sent to Madame de Stael and Mr. Edgeworth when they expressed a wish to meet him.⁴¹

In 1820 a young man by the name of John Bowring was introduced to Bentham. The two men, aged respectively twenty-eight and seventy-two, became the warmest of friends. Bowring spent much time in the next twelve years in the elder man's companionship, and by reason of this intimacy became especially well qualified to write of Bentham and his work. After Bentham's death Bowring undertook the task of editing the correspondence and manuscripts bequeathed to him. As a result of this work, eleven volumes, in which are contained a biography of Bentham and many of his writings, appeared in 1843.⁴² A number of manuscripts, packed away in more than eighty neatly labeled

³⁸ Stephen, *op. cit.*, I, pp. 223ff.

³⁹ Sidgwick, *Miscellaneous Essays and Addresses*, p. 137.

⁴⁰ Montague, *op. cit.*, pp. 45ff.

⁴¹ Bowring, *op. cit.*, XI, p. 79.

⁴² *The Works of Jeremy Bentham*, published under the direction of his executor, John Bowring.

boxes, and a number of portfolios are still stored at University College.

Lessening mental and physical vigor experienced in the summer of 1831 caused Bentham to remark that they were the precursors of his passing from life. Gradually slackening his writing as the months moved on, enjoying the association of close friends in Queen's Square Place, keeping in touch with current events till the last, he calmly, consciously, met the end June 6, 1832, in the strength of his own philosophy, saying to his loved friend when he thought the last hour was near: "I now feel that I am dying: our care must be to minimize pain. Do not let any of the servants come into the room, and keep away the youths; it will be distressing to them and they can be of no service. Yet I must not be alone: *you* will remain with me and you only; and then we shall have reduced pain to the least possible amount."⁴³

With a view to the advancement of science, Bentham directed that his body should be dissected. "The skeleton, covered with the clothes he commonly wore, and supporting a waxen effigy of his head, is carefully preserved in the Anatomical Museum of University College, London. Across one knee rests his favorite stick 'Dapple' and at the foot of the figure lies the skull with the white hairs of the old man still clinging to its surface."⁴⁴

Early in life Bentham arrived at the definite philosophy which governed all his efforts. It was developed out of his actual personal contact with others, combined with his reading and his reasoning. This philosophy was his doctrine of utility; and from the survey of his life which may be gained from his written works, it was a strong philosophy, whole-heartedly directed towards the betterment of man.

Bentham claimed that the only right ground of action is *utility* which he defined as "that property in any object, whereby it tends to produce benefit, advantage, pleasure, good, or happiness (all this in the present case comes to the same thing) to prevent the happening of mischief, pain, evil, or unhappiness to the party whose interest is considered: if that party be the community in general, then the happiness of the community: if a particular

⁴³ Bowring, *op. cit.*, XI, p. 95.

⁴⁴ Atkinson, *op. cit.*, p. 208.

individual, then the happiness of the individual."⁴⁵ As a principle applicable to the dealings of man with man, utility "approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question; or, what is the same thing in other words, to promote or oppose that happiness. I say of every action whatsoever; and therefore not only of every action of a private individual, but of every measure of government."⁴⁶

Bentham, a pioneer of the Utilitarians, enlarged upon the doctrine of utility set forth by Beccaria, Hume, Helvetius, and Priestley. He was followed by the Mills and many others who have had a significant influence in the development of Utilitarian-

⁴⁵ A study of the writings of Bentham and of the relations of Bentham to his friends, reveals his championship of the doctrine of happiness. He placed very strong emphasis upon "the greatest happiness of the greatest number," upon the surplus of pleasure over pain, but critics have had a tendency to overlook the real truth in Bentham's teaching. Burton distinctly states that misunderstanding of Bentham's opinions was due to "the inability of men to see sources of pleasure to others in things which were not sources of pleasure to themselves."

Bentham's whole life was undeniably "a rejection of the more gross and tangible objects of human enjoyment: a recourse to elements of pleasure and satisfaction, for which vulgar and truly selfish minds have no appreciation. Seclusion, temperance, and hard labour were preferred, as the outward and visible signs of enjoyment, to popularity, indulgence, or luxurious ease; and the inward source of satisfaction was the consciousness of doing permanent good to the human race."—(Burton, *Introduction*, pp. 23-24.) "Hedonism," as such, "affords no room for the play of those finer sentiments about the good and the just, the beauty of righteousness, the nobility of duty." (Rogers, *Philosophy*, p. 00.) It is freely granted that Bentham in the exposition of his principles did emphasize the measurement of pleasures and pains, but his fundamental wish through it all was *justice*. In the light of the present day when there is a reaction against hedonism it is a keen delight to read the statements of Bentham himself and find in them a larger idea, a broader view than his critics have credited to him. In his own words, "an action may be considered and spoken of as *useful*, as conducive to general utility, in proportion to the *value* of any pleasures which it is its tendency to produce, or of any pains which it is its tendency to avert," we note more than simply the quantitative standard generally ascribed to Bentham. Always promulgating reform in legal, judicial, and social lines so that human welfare should be enhanced, the sentence quoted is one which presents Bentham's deeper thought relative to the *summum bonum*.

In his discussions and explanations Bentham aimed to present and develop plans whereby legislators might enact legislation that would be of real benefit, not merely because of the happiness as such that it would produce, but because of the enlargement of human welfare, the upbuilding of humanity for humanity's good, that would result. "When legislators shall study the human heart; when they shall show their attention to the different degrees and different kinds of sensibility, by limitations and modifications; these condescensions on the part of power will charm like paternal endearments."—(Bowring, *op. cit.*, 1, p. 35.)

⁴⁵ Bentham, *An Introduction to the Principles of Morals and Legislation*, p. 1.

⁴⁶ *Ibid.*, p. 1.

ism. "The term Utilitarianism, designative of a philosophical theory in ethics and politics is a very modern one; but the thing that it represents is very old. It represents interest in the welfare of mankind, wedded to practical efforts to ameliorate the conditions of human life on rational principles and to raise the masses through effective state legislation."⁴⁷ The Utilitarian is stirred by intellectual, educational, political, ethical, and social ideals that tend to the "greatest happiness of the greatest number." Individual well-being is not isolated for each is linked with all with whom he comes in contact, and the welfare of each, being made up of all the elements that in their sum total form an individual's happiness, is utility.⁴⁸

Bentham's philosophy was, and is, a working creed, possessing working power. Directing all the labors of his life to its propagation he may be ranked as a leader in measures promulgated for the nation's or the individual's well-being. His friends and contemporaries knew that he was in advance of his time, that governmental powers would not yield to measures adverse to existing conditions. However, reforms which have materially aided England during the past century prove that fulness of thought and the passage of time were needed to develop the enlightenment favorable to change.

⁴⁷ Davidson, *Political Thought in England*, pp. 7ff.

⁴⁸ *Ibid.*, pp. 10ff.

CHAPTER II

BENTHAM'S FIGHT FOR POLITICAL DEMOCRACY

The English people of the eighteenth century as the inheritors of the English government did not question the existence of error in their constitution or its administration. But they revered their sovereign, respected the intangible, unwritten law of their land, and did not contemplate altering their government. The two classes of people, landed gentry and tradesmen, held respectively the positions of the governing and the governed. Apparently this was good and proper and neither class anticipated change. However, the governed, by a process of evolution, were making advances through the growing importance of industry and trade and their increasing influence in public affairs. This progress was facilitated by their psychological fitness and through the aid of reformers.

Eighteenth century in England is characterized by the number of men who thought incisively upon the conditions in government, labor and society. They understood, as the mass of the people did not, how surely the latter were approaching a position of governmental power. They rightly reasoned that reforms should be made that would be beneficial to all England. Foremost among these men was Jeremy Bentham. Influenced by the philosophy of Locke which taught the employment of reason, freedom of thought, and the abandonment of prejudice, and also by the teachings of Beccaria, Helvetius, Hume, and Priestley, Bentham formulated the principle which became his test for all conditions of life.¹ This principle, utility, Bentham defined thus: "It is the greatest happiness of the greatest number that is the measure of right and wrong."² He was convinced that utility was "capable of guiding him through the whole labyrinth of political and legislative speculation."³

When Bentham listened to the lectures upon the English

¹ Stephen, *The English Utilitarians*, I, p. 177.

² Bowring *Works of Jeremy Bentham*, I, p. 227.

³ Stephen, *op. cit.*, I, p. 178.

Constitution given by Blackstone he was impressed by two things, their polished phrasing and their fallacies.⁴ Although but a youth at the time he comprehended with keen penetration that England's constitution did not merit the perfection accorded to it by the great jurist. In his essay *The Fragment on Government* he minutely analyzed statements made by Blackstone and pointed out errors no one had ever dared to mention. In successive chapters under the titles, "Formation of the Government," "Forms of Government," "British Constitution," "Right of the Supreme Power to Make Laws," and "Duty of the Supreme Power to Make Laws."⁵ He tore Blackstone's "whole flimsy fabric to rags and tatters."⁶ "He broadly avows his universal test—his fundamental principle of utility. He shows no mercy to the well-rounded periods of Blackstone, exposing with the most ruthless logic their ostentatious wrapping up of no meaning in sounding language. The first object of the treatise is to show that analogous to discovery and improvement in the natural world is reformation in the moral world. With an energy unsurpassed in the works of his maturest genius, he vindicates adherence to stern simple truth on all occasions, laying down the principle, as applicable to the defender of abuses, that 'every false and sophistical reason that he contributes to circulate, he is himself chargeable with.' He makes wild work with the figures of speech employed to plaster up the chinks and crannies of 'Matchless Constitution.' He tosses about and disperses 'checks and balances,' 'blending of aristocracy, democracy, and monarchy, into a whole, combining all their advantages, and free from their defects,' and the like. He paints the social structure of Britain as it existed, and in a measure still exists, not in the dainty phrases of legal fiction. The work is critical: it shows the hollowness of what had hitherto been taught."⁷

Having made a careful study of the English constitution Bentham pointed out the lack of agreement between the theory and the functioning of the constitution. Then he quoted paragraphs from Blackstone and discussed them in order to expose

⁴ Bowring, *op. cit.*, X, p. 45, 141, I, p. 236.

⁵ Montague, *The Fragment on Government*, p. 130.

⁶ Stephen, *op. cit.*, I p. 182.

⁷ Bowring, *op. cit.*, I, p. 1X.

discrepancies. Illustrative of this is the passage: "For as with us the executive power of the laws is lodged in a single person, they have all the advantages of strength and dispatch that are to be found in the most absolute monarchy; and as the legislature of the kingdom is entrusted to three distinct powers entirely independent of each other; first, the king; secondly, the Lords Spiritual and Temporal, which is an aristocratical assembly of persons selected for their piety, their birth, their wisdom, or their valour, or their property; and thirdly, the House of Commons, freely chosen by the people from among themselves, which makes it a kind of democracy."⁸ That government in which the people freely choose members of its legislative body from among themselves is representative. England's government was commonly called representative;⁹ it was considered such by other nations.¹⁰ But Bentham insisted that it was not representative because of the agencies of government,—King, Ministry, and Parliament,—only a small portion was elected directly by a restricted electorate. The corruption which enabled members of the House of Lords to purchase the election of many members of the House of Commons, and the control exercised by the ministry over the king, placed the actual governing power in the hands of so limited a number of persons that it made England's government really an oligarchy. Bentham showed that the ideals advanced by Blackstone and the actual conditions of the times were strikingly different; therefore, he emphasized the need of constitutional reform as the basis of legislative and administrative reform.

The Fragment was "a serious attempt to apply scientific methods to problems of legislation,"¹¹ but the English nation had not yet reached the stage for employing these methods. Bentham's attitude toward the English constitution was further defined by him forty years after he published the essay: "I prefer the English Constitution, such as it is, to non-government, and to every other but the United States government. But I do not prefer it, such as it is, teeming with abuses and other imper-

⁸ Montague, *op. cit.*, pp. 182ff.

⁹ Hazen, *Europe Since 1815*, p. 409.

¹⁰ *Ibid.*, p. 409.

¹¹ Stephen, *op. cit.*, I, p. 182.

fections to what it would be if cleared in the whole, or part, of all or any of these same imperfections."¹²

Believing that sovereign power belonged to the people,¹³ Bentham maintained that the people of England should have the privilege of exercising this power through a representative government.¹⁴ Bentham emphasized the idea that all the people of the nation should participate in governmental matters. England's master stroke of 1295 had consisted in the fact that that event definitely made the nation's legislative body representative. The passing of the next five centuries had been marked by an increase of corruption on the part of officials as they gained in governing power and by the passage of restrictive acts; and thus the legislative body had ceased to be representative. During these same centuries the people had grown gradually into a larger measure of the instincts and interests which should ultimately determine their place in the governing class. However, when the philosopher, Bentham, presented his scheme in their behalf, they were not quite prepared for it, and those in authority were opposed to it.

England of eighteen hundred, so different socially and economically from England of thirteen hundred, had need of reform in its constitutional administration, particularly in its Parliament. The Parliament at Westminster "was in no conceivable sense representative of the English people. It represented the territorial aristocracy, and, to a certain extent, but only a very limited extent, the wealthiest of the trading and manufacturing classes. No Roman Catholic, Dissenter, or Jew could be a member of Parliament; when all other disqualifications were absent there was a property qualification which prevented any poor man from obtaining a seat in the House of Commons."¹⁵ "Furthermore, a systematic view of a modern State in all its complexity with scientific laws and regulations was utterly strange to English thought."¹⁶ It was Bentham's mission to teach "the nation that scientific investigations are indispensable

Bentham greatly admired the Constitution of the Anglo-

¹² Bowring, *op. cit.*, XI, p. 62.

¹³ *Ibid.*, IX, pp. 96ff.

¹⁴ *Ibid.*, IX, pp. 23, 37, 38, 75, 103, 104.

¹⁵ McCarthy, *England in the XIXth Century*, p. 14.

¹⁶ Redlich and Hirst, *Local Government in England*, I p. 91.

American United States. In its national plan of executive, legislative, and judicial departments and its similar individual state if laws are to be made adequate to the needs of a modern industrial state.'"¹⁷

organizations he saw a democratic representative plan with national and local coördination. The people of the United States through well-ordered electoral methods participated in the making of their laws and in the administration of them. Clearly the English nation could, through proper adjustments in electoral arrangements and the extension of franchise rights, be just as democratic as the United States. He elaborated his ideas in the *Constitutional Code*, in which may be found the germs of many reforms enacted into English legislation during the past eighty years.¹⁸ Bentham was confident that the work he was trying to accomplish would in time be brought about, notwithstanding the repeated disappointments with which he met. "He is said to have expressed the wish that he could awake once in a century to contemplate the prospect of a world gradually adopting his principles and so making steady progress in happiness and wisdom.'"¹⁹

Among other things Bentham presented four proposals whose adoption he deemed essential to constitutional betterment: (1) the coördination of central and local government;²⁰ (2) the reorganization of Parliament as a representative democratic body and the organization of local governing bodies on the same principle;²¹ (3) the political sub-divisions of a territory should be planned in harmony with the principle of utility, in order to satisfy actual needs, and not planned according to accident or tradition;²² (4) economy and efficiency should enter into the the nation's civil service, and ability and knowledge in the respective fields should be the test for obtaining position.²³

Constitutional Code, arranged a central and a local plan of gov-

England had, long before Bentham's day, outgrown the chaotic system of government under which it was living. Wish-

¹⁷ *Ibid.*, I, p. 91.

¹⁸ Maine, *History of Early Institutions*, p. 397.

¹⁹ Stephen, *op. cit.*, I, p. 230.

²⁰ Bowring, *op. cit.*, IX, p. 640.

²¹ *Ibid.*, III, p. 563.

²² *Ibid.*, III, pp. 579ff.

²³ *Ibid.*, IX, pp. 266ff.

ing to remedy the inefficient administration, Bentham, in his government that paralleled each other in administrative and legislative functions. He presented a graduated scheme of division of territory into districts, subdistricts, and bis-subdistricts for the election of legislative officials.²⁴ However, his contemporaries were so accustomed to the traditional hundred, wapentake liberty, manorial court, parish, township, union, county and municipality with all the peculiarities attendant upon them, that they were not disposed to adopt his modified form so marked by simplicity. The organization of Parliament, or the central government, and of local government upon the same principles, although plainly a method that would facilitate and improve administration and legislation, was a suggestion too far in advance of the times to meet with support. The time was ripe through growth in industrial lines for fixing upon a plan of districting that would eliminate the cumbrous method in use, but the progress of the day was not yet to be recognized in governmental administration. To require ability and knowledge as qualifications of officials would be at such variance with what was customary in the way of office filling that it could not be accepted.

Bentham consistently promulgated the idea that detailed and complete administration in both central and local government was absolutely essential to the greatest happiness of the greatest number. He outlined a careful, practical scheme for the distribution and the classification of duties and officials. He strongly denounced anything in governmental work that evidenced wrong and injustice.

Although he met with discouragements and rebuffs, the efforts put forth by him and by his friends in Parliament finally resulted in legislation that secured constitutional reform based upon the ideas he had advocated. The governing and the governed, unequal in eighteen hundred, were elements that became poised long before the year nineteen hundred in a democratic balance. The electorate of England increased so as to be made up of practically all male citizens. The redistricting of territory upon Benthamic plans, the removal of restrictions, the responsibility of the members of the House of Commons to the people, the responsibility of the ministry to the House of Commons, are

²⁴ *Ibid.*, IX, p. 147.

several conditions which evidence that sovereignty in England today rests with the supreme constitutive. The interest of the people in governmental activities is co-equal with their interest in industrial, social and economic lines; and the efforts of the legislative department are directed towards democratic ideals. Bentham's writings and teachings aided in making Blackstone's statement, "freely chosen by the people from among themselves," become a reality. The aristocratic tendency and the oligarchic power of the government have lessened and waned as England's people have progressed into a democracy.

CHAPTER III

BENTHAM'S FIGHT FOR POLITICAL DEMOCRACY

(Concluded)

The progress of England in democratic ideas and democratic legislation since the dawning of the nineteenth century is a development of prime historical significance. Prior to eighteen hundred England was a country closely held in the thraldom of tradition. Her people were supporters of existing conditions because of the reverence and the respect accorded to those holding the reins of government, and because the interests and the instincts of the uninstructed had not yet attained maturity. The leaven of enlightenment, due to the writings of eighteenth century philosophers, began to have an influence, but this influence could not be very great until someone daring enough to break away from established custom should come forward, expose the wrongs of the past centuries, and present constructive proposals for betterment. At a time when freedom of thought had led to much suffering in France, and had resulted in setting up an independent government in America, England's government withstood progressive change. Her ruling authorities could not graciously accept modifications in the administration of their duties that would take from them traditional and coveted power. For the landed gentry, the heritage from the past was parliamentary position; for the legally learned the accorded right was machination in their own behalf; for the great majority of the population, it was obedience to what existed. Jeremy Bentham resolutely assumed the task of changing the gentry's heritage, correcting the legal wrongs, and securing larger political rights for the great majority. As the result of his labors it is now claimed that today "his doctrines have become so far part of the common thought of the time that there is hardly an educated man who does not accept as too clear for argument truths which were invisible till Bentham pointed them out."¹

Unquestionably it may be said that Bentham was the great

¹ *Encyclopedia Britannica*, III, p. 748.

critical thinker of his age and country.² He possessed a mind which enabled him to build, from minutest detail to finished scheme, plans conducive to improvement in government and legal administration. Being one of the first to introduce precision of thought into moral and political philosophy, Bentham had of necessity to meet the attacks of those who were biased by tradition, but his optimistic nature aided him in warding off objections and encouraged him to continue along a line of great resistance. Because of unswerving application to the promulgation of his carefully analyzed schemes he is today classed with Adam Smith as having brought about happiness and prosperity for mankind during the past century and a quarter.³ Chatterton says that it is to England's lasting credit that she produced in Jeremy Bentham the greatest practical law reformer of any age or country.⁴ Unhesitatingly he disclosed "the fanatic and illogical maxims on which technical systems were founded, he derided their absurdities and exposed the flagrant evils which in practice they produced."⁵

Bentham reasoned that the problem of the legislator as a law-maker was to further the enactment of laws which would secure for everyone in the nation the greatest happiness. Those in legislative position should, in considering a measure, weigh it both with reference to present and future results. England's fault had been to enact laws for immediate use as occasion demanded without considering their continued usefulness or worth. Hence arose the growing inadequacy of accumulating laws. Bentham presented a new principle for law-makers in urging that they formulate laws after having thoroughly reasoned out the intention and the motive governing them. In the words of Bentham a good motive gives birth to a good intention, a bad motive to a bad intention, and "an invention is good or bad according to the material consequences" resulting.⁶

It was also his claim that the legislators should put aside their personal, selfish interests and work for the genuine positive good of the many. This claim was in direct contrast to the

² Mill, *Dissertations and Discussions*, I, pp. 355ff.

³ Chatterton, *Britain's Record*, pp. 232ff.

⁴ *Ibid.*, p. 260.

⁵ Atkinson, *Jeremy Bentham*, p. 138.

⁶ Davidson, *Political Thought in England*, pp. 57ff.

statement made by the Bishop of Rochester in 1795, the substance of which was that "he did not know what the great mass of the people had to do with the laws except to obey them."⁷ On the legislators of a country rests a great responsibility which has frequently been lightly assumed. The statement of Helvetius, "The hidden source of a people's vices is always in its legislation; it is there that we must search if we would discover and extirpate their roots"⁸ is very bold; yet its truth cannot be denied.

Bentham's training and experience caused him to see serious defects in the laws of England and their administration. Hoping to bring about improvement by striking at the roots of existing evils he labored earnestly to influence legislators to exert their power in Parliament to that end. Lansdowne, Pitt, Romilly, Mill, Brougham, Burdett, Wilberforce, and other leading members of Parliament were among the friends and associates of Bentham who were well aware of the need of reform in legislation and in the administration of justice. Their discussions upon public topics led to the introduction of bills in Parliament that were rejected. The reason for their rejection is found in Bentham's own words: "Though Lord Lansdowne has neither the wish nor the power to do much good, yet the other lords are as much below him as he is below what he ought to be. He said to me, the lords were a wall against improvement."⁹ However, each bill brought forth was effective in setting more and more men to thinking and in time the thinking yielded a large and goodly fruitage. Since 1832 England has legislated into existence many reforms and Sir Henry Maine said every one of them could be traced to the teachings of Jeremy Bentham.¹⁰

Bentham treated administration and legislation as sciences demanding a foundation as technical and complete as mathematics or natural philosophy, and a superstructure so wholly in accord with the foundation that uniting the two, foundation and superstructure, would yield an harmonious system that could be subjected to rigid analysis yet stand.¹¹ His *Constitutional*

⁷ Rose, J. Holland, *William Pitt and the Great War*, p. 286.

⁸ Sidgwick, *Miscellaneous Essays*, p. 152.

⁹ Bowring, *The Works of Jeremy Bentham*, X, p. 122.

¹⁰ Maine, *History of Early Institutions*, p. 397.

¹¹ Burton, John Hill, *Introduction to the Study of the Works of Jeremy Bentham*, p. 5.

Code, which is the crowning work of his writings, was written after he had lived a full, rich lifetime devoted to a single interest, viz., the betterment of humanity. The *Constitutional Code* is characterized by completeness of fabric and accuracy of proportion and forms a homogeneous whole which reveals the author's grasp of his subject. The structure and interrelated harmony of the *Constitutional Code* are such that one who was personally associated with its author said: "In no language does any other such monument of the legislative labor of one mind exist."¹²

Many opinions advanced by Bentham were so at variance with the accepted regulations of his day that they were naturally set aside or coldly received.¹³ But he did not lose faith in what he had determined upon for he well knew that men cannot change quickly institutions that had centuries of time for support. America's Aaron Burr, friend and correspondent of Bentham, said that a century of time would have to pass before the philosopher would be understood, but that then he would be adored.¹⁴ As the result of persistent efforts, the opinions Bentham presented gradually gained ground, and they have become so welded into the nation's constitutional law that men do not now stop to consider that the ideas were ever other than their own.

As Bentham worked he kept always in mind his principle of utility and every item of his *Constitutional Code* will bear testing by it. "He did not say that the world had hitherto been ignorant of such a principle; * * * He found indeed that it was at the root of all systems of religion and morality; that all codes of law were more or less founded upon it; and that it was, in all places and at all times, an unseen and unacknowledged guide to human action. But he was the first to bring forth this guide, to prove to the world that it should be followed implicitly, and to show hitherto, from not keeping their guide in view, men had often wandered from the right path. 'The good of the community,' 'the interests of the public,' 'the welfare of mankind,' all expressions to be found in the mouths of those who talk of the proper ends of action, were so many acknowledgments of the Greatest happiness Principle, and vague attempts to embody

¹² *Ibid.*, p. 12.

¹³ *Ibid.*, p. 3.

¹⁴ Parton, *Life of Aaron Burr*, II, p. 171.

it."¹⁵ Details from start to finish are fully worked out in the *Constitutional Code* and it is because Bentham gave the details of the operation of his principle that the principle itself has been accepted.¹⁶

Declaring that all departments of England's government were so administered as to enhance the power of the official incumbents and that they had "at all times had an interest and a desire operating in direct opposition to those of their subjects,"¹⁷ Bentham claimed first importance for a constitutional code because all other codes would depend upon it.¹⁸ Among the first principles introductory to his code was: "The *actual* end of government is, in every political community, the greatest happiness of those, whether one or many, by whom the powers of government are exercised."¹⁹ This principle was said to be exemplified in the Anglo-American United States because it has a constitution based upon the principle of utility.²⁰ Contrasted with this was the fact that "The English monarchy has no constitution for it has no all-comprehensive constitutional code."²¹ Because fortune or providence is the element that determines who shall be the ruler in a monarchy and human judgment is the element that determines the ruler of a representative democracy Bentham claimed superiority of the latter over the former.²² The constitutional branch of the law in an absolute monarchy aims at the greatest happiness of one individual and the constitutional branch of the representative democracy aims at the happiness of the greatest number.²³

By his presentation and analysis of the various departments in representative government, Bentham developed a complete and comprehensive administrative scheme. The relation of civil, penal, and military law, the law of procedure, and financial affairs to the constitutional law of a representative democracy was pointed out in such a way as to show that all are linked together, and their harmonious coöperation results in the well-being

¹⁵ Burton, John Hill, *op. cit.*, pp. 19ff.

¹⁶ *Ibid.*, p. 20.

¹⁷ Bowring, *op. cit.*, IX, p. 2.

¹⁸ *Ibid.*, IX, p. 3.

¹⁹ *Ibid.*, IX, p. 5.

²⁰ *Ibid.*, IX, p. 9.

²¹ *Ibid.*, IX, p. 9.

²² *Ibid.*, IX, p. 10.

²³ *Ibid.*, IX, p. 10.

of the nation at large. Bentham set forth the evils in the systems of absolute and limited monarchies and then presented the corresponding advantages of a democracy. By means of this analysis he developed the superiority of a representative democracy over a monarchy, justly claiming that where many bear responsibility, many have direct interest, and the maximum of happiness results.

He explained the many conditions in England conducive to corruption, and attributed the extensive yielding to corruption on the part of governmental officials to the fact that the ones in hereditary positions had power to offer tempting opportunities to sub-officials. "The members of the official establishment have, in their quality of corruptors, or would-be corruptors, their accomplices, and in the natural course of things, their confederates."²⁴ Again he wrote: "In England, in virtue of the pre-established harmony, so long as the Constitution stands, corruption with its etceteras is predestined to go on in a state of perpetual advance: never to be stationary, much less retrograde."²⁵ In contradistinction to this he said: "Although the complete exclusion of corruption is too much to hope for, what is not too much to hope for is the bringing it about to a degree less than it exists at present even in the United States."²⁶ He held that the administration of government by elective officials dependent upon the supreme constitutive secures the desired ends of government. The officials in the scheme developed in Bentham's *Constitutional Code* were the legislature, the prime minister, the ministers, the judiciary, the sublegislatures, and local officials. The Code analyzed and explained the duties and the compensation for each official and showed that, through co-operation with the supreme constitutive, the best in government for the nation could be secured.

Comparing the two forms of government the author of the *Constitutional Code* said: "Pure monarchy is the rock which, having been placed and poised by accident the push of a finger has sufficed to move: broad at bottom, pointed at top, a representative democracy is a pyramid."²⁷ His attitude toward the

²⁴ *Ibid.*, IX, p. 67.

²⁵ *Ibid.*, IX, p. 73.

²⁶ *Ibid.*, IX, p. 75.

²⁷ *Ibid.*, IX, p. 133.

hereditary monarch was definitely one of opposition for he could not bring himself to believe that such a ruler had the interests of the people at heart. This is evidenced, for example, in his statement: "In a monarchy, be the conduct of the ruler ever so mischievous, the difficulty of dislocating him is prodigious, and scarcely ever can any change be effected without either a homicide, or a war—which is an aggregate of homicides by hundreds and thousands; whereas in a representative democracy, the rulers may be, and continually are, all of them together, though it be merely in the way of precaution, and without evil actually experienced at their hands, dislocated with as much facility as a servant is by his master, in domestic life.²⁸ Bentham being contemporaneous with George III saw in him living evidence of what he considered gross abuse of the people's rights in the daring assumption of power on the part of that ruler. Undoubtedly the conduct of George III and the progress of the democratic United States of America were the two extremes that caused Bentham to say that the republican form of government was the only form that would work out successfully upon his principle of utility as a foundation. With the passing of the years the powers of England's monarch have been lessened to such an extent and so much is he controlled by "the will of the governed" that practically the only respect in which Bentham's view has fallen short of realization is that the kingship is still hereditary.

England's approach to democracy has rested also upon the make-up of Parliament. Bentham desired to have its membership composed of elective officials, placed in their positions by the universal manhood suffrage exercised in an unrestricted intelligent manner. Hence, he advocated manhood suffrage and the employment of the secret ballot. He emphasized the unfairness that marked the returns of members to Parliament and the utter lack of a voice in government matters on the part of the millions most vitally affected by legislation. Little by little his scheme for wider franchise gained supporters among leading statesmen and publicists such as Brougham, Dunham, Peel, Romilly, Hunt, Hobhouse, O'Connell, Place, Cobbett and Burdett. Practically forty years of discussion and the defeat of several bills resulted

²⁸ *Ibid.*, IX, p. 103.

in the Reform Bill of 1832. This bill by the disfranchisement of "rotten boroughs," the increased representation of the large manufacturing centres, and the modification of the franchise so that more householders became voters, shows marked results of Bentham's influence.

Through the last thirty years of his life Bentham knew that his doctrines were spreading, that men's minds were broadening, that the masses were awakening to a true sense of their rights as voters and to an understanding of England's need of a fairly-elected, representative legislature. The Reform Bill of 1832 acted as an opening wedge to further parliamentary reform which may be attributed to Bentham because the ideas promulgated by him were developed through the efforts of his disciples. His personal friends, Romilly, Brougham and James Mill, were among the members of Parliament who were very influential in bringing about these measures for improvement. In 1835 the Municipal Corporations Act dealing with the municipal government of the boroughs, built wholly upon Bentham's principles, was passed and thus the boroughs obtained a democratic basis which was not formerly theirs.

The rights of the people were continually and consistently fostered by able leaders in the decade immediately following Bentham's death. Foremost among these leaders were Richard Cobden and John Bright through whose zealous efforts the people were educated in political matters at great mass meetings, while the members of the House of Commons listened spellbound to orations of Bright which sounded throughout the doctrines of Bentham. The spirit of democracy, aroused by the writings of the philosopher of Queen's Square Place, yielded results from time to time that aided greatly in bringing into actual use the scientific legislation upon a democratic basis which is today England's proud possession.

The additional gains of the people with reference to the franchise are seen in the passage of bills which marked important advances in democracy. The Act of 1867 outstepped the Bill of 1832 in a most natural manner. More householders, more renters, more workingmen were given the right to vote, and thus more of the humble individuals were given opportunity to stand by the side of aristocratic individuals and "count for one." The Act of 1884, since it excluded from the franchise only three

classes of people—domestic servants, those who had no fixed abode, and bachelors living with their parents—moved forward practically to manhood suffrage. It was very close to a verification of Bentham's statement: "The governed cannot all of them be exercising the immediate powers of government, but at stated times they may all of them exercise the function of declaring who the individuals shall be by whom those same immediate powers shall be exercised."²⁹

During the ministry of Lord Salisbury in 1888 an act was passed by Parliament which secured for London and the rural counties municipal administration such as Bentham advocated. This act with the measure of 1835, makes it possible to say that England and Wales were placed distinctly upon a democratic basis for the election of municipal officials. The substance of the foregoing measure is purely Benthamic and reveals again the influence of the philosopher of Queen's Square Place.

With reference to woman's suffrage Bentham took a decided stand. In harmony with his principle, he claimed that there was no reason why a person of one sex should have less happiness than a person of the other sex and that the happiness of a person of the female sex constituted as large a part of universal happiness as the happiness of a person of the male sex.³⁰ He emphatically stated that woman was as capable of mastering the technique of the franchise as man. He proved that woman in theory was as capable of holding governmental position as man, clinching his argument by saying: "In no two male reigns was England as prosperous as in the two female reigns of Elizabeth and Anne."³¹ Because the thought of woman's voting was very radical and because his contemporaries did not look up the history of it, derision very naturally greeted Bentham's advocacy of woman's suffrage. When John Stuart Mill in 1867 moved an amendment to Disraeli's bill in which he suggested that the word "persons" be substituted for "men," the amendment provoked great amusement and was defeated by a vote of one hundred and ninety-six to seventy-three. However, the year 1868 was marked by the formation of a "National Society for Women's Suffrage" and the next year saw the first franchise

²⁹ *Ibid.*, IX, p. 95.

³⁰ *Ibid.*, IX, p. 108.

³¹ *Ibid.*, IX, p. 108.

privilege granted to woman. Since 1869 successive acts of legislation have very materially extended the citizenship privileges and political rights of woman.

In the exercise of the limited franchise of his time, Bentham saw so much that was grossly wrong in the practice of bribery and intimidation that he wrote freely upon these evils and pointed out the injustice of a system that permitted them. To obviate these wrongs he presented the plan of the secret ballot. Resolutions presented in Parliament June 2, 1818, by Sir Francis Burdett, drafted by Bentham, had included universal manhood suffrage and the ballot. Tories and Whigs both opposed the resolutions and they were lost, but the impetus given to the matter gradually increased until 1872 when the passage of the Ballot Act provided for the ballot and the voting booth.

The English Constitution of today, contrasted with the constitution of Bentham's day, reveals a significant transformation. This change is seen and not seen, for as Bagehot says, "the ancient and ever altering constitution is like an old man who still wears with attached fondness clothes in the fashion of his youth; what you see of him is still the same; what you do not see is wholly altered."³² As early as 1776 Bentham had determined that Blackstone's phrase, "The House of Commons freely chosen by the people from among themselves,"³³ should become true. The House of Commons today elected by a wide electorate is "a corporate entity in which the supreme sovereignty is vested."³⁴ It is the factor which determines the membership of the English ministry, a department invisible in Bentham's day but today "the great driving wheel that moves the entire constitutional machinery."³⁵ It is because legislation, effective and scientific, and based upon utility, has become a reality that the English people are now exercising political rights which are the fundamentals of a genuine democracy. "The mediaeval monarchy has been finally transformed into the hereditary republic, in which, under the ancient and still useful forms of the throne and the regalia the English people is king."³⁶

³² Taylor, *The Origin and Growth of the English Constitution*, III, p. 592.

³³ Montague, *Bentham's A Fragment of Government*, p. 183.

³⁴ Taylor, *op. cit.*, I, p. 593.

³⁵ *Ibid.*, I, p. 593.

³⁶ *Ibid.*, I, p. 594.

CHAPTER IV

LEGAL AND JUDICIAL REFORM

Jeremiah Bentham desired above all things that his son Jeremy should become a renowned lawyer, win honor in the field of jurisprudence, and eventually attain the woolsack. The son mastered the lawyer's profession, but as has already been pointed out, he saw in it, as it was practised, much of which he could not approve. At a time when, on the one hand, many could not think and do for themselves, and on the other hand, the ones in governmental authority were thinking and doing mainly for their own interests, Jeremy Bentham was considering the problems of humanity for humanity's sake. Among other things he wished to expose the wrongs that professional men kept concealed in the winding processes of the law, processes that were beyond the understanding of the ignorant masses.¹ The unfairness of long trials and the intricacy of legal procedure, characteristic of court action in England for many years, Bentham desired to see removed. This caused him to determine upon a very different career from the one planned for him by his father.

For the nineteen-twentieths of England's people who were untutored, uneducated, held down by the tradition, Bentham became the champion who unflinchingly exposed evils, suggested remedies, and presented plans for reform. In the face of times and conditions that for years were at variance with his ideas, he labored untiringly to secure the removal of wrongs that had long been endured, for he had early in his philosophical thinking reached the conclusion that there should be more justice for the masses in England. According to Bentham's philosophy there would be more justice if the institutions of men were built upon the principle of utility, which simply means that which is conducive to happiness, or "the greatest happiness of the greatest number."²

England's mass of laws "reared with incredible labour,

¹ *Westminster Review*, XIV (1837), pp. 352-354.

² Merz, *History of European Thought in the Nineteenth Century*, IV, pp. 142ff.

through a long succession of ages''³ was characterized chiefly by confusion due to haphazard construction and enactment.⁴ Having been made without a plan, the laws utterly lacked system; having been enacted piece-meal, frequently to fit cases for immediate use, statutes became incorporated into the body of the law and remained there. Knowledge of the law was the possession of the legally learned, so the people did not know the law nor its interpretation. Consequently many unwittingly broke the law and suffered penalties that were cruelly unjust.

From his own analysis of the law Bentham could say: "The *substantive* part of it, whether as written in books or expounded by judges, a chaos, fathomless and boundless; the huge and monstrous mass being made up of fiction, tautology, technicality, circuitry, irregularity, and inconsistency: the administrative part of it, a system of exquisitely contrived chicanery; a system made up of abuses; a system which constantly places the interest of the judicial minister in opposition to his duty, and in the very proportion in which it serves his ends, it defeats the ends of justice; a system of self-authorized and unpunishable depredation; a system which encourages mendacity, both by reward and punishment; a system which puts fresh arms into the hands of the injurer, to annoy and distress the injured; in a word, a system which maximizes delay, sale, and denial of justice."⁵ Bentham attacked the "fabric reared by the most exalted intellects,"⁶ and labored to direct the thoughts and the efforts of influential men to the accomplishment of legal reform.

The history of English legal administration contains many cases characterized by great injustices of charge, procedure, and penalty. As an illustration may be cited the case of Mr. Price, a clergyman for many years in a parish church. In behalf of the striking weavers of Kidderminster he had written some articles that were simply explanatory of the situation. He was arrested for libel and tried. The details of the case clearly show that he was not guilty of the charge brought against him. At the conclusion of the trial, however, he was declared guilty, his possessions were sold, his family scattered, and he was condemned to a

³ Bowring, *The Works of Jeremy Bentham*, XI, p. 84.

⁴ *Ibid.*, I, p. 162.

⁵ *Ibid.*, IX, p. 85.

⁶ *Ibid.*, XI, p. 84.

year's term of imprisonment. The expense to the prosecutors was from seventeen hundred to two thousand pounds.⁷ Bentham felt that such wrong should be rendered impossible, that the people should have a clear understanding of the law, and that legal adepts should no longer have opportunity of obtaining unfair fees. He exposed the many devices employed by the courts, described the long winding processes that ensued before a hearing was granted, showed the difficulty litigants experienced in getting to distant courts, elaborated the method of bandying cases from court to court, and explained the injustice of using unintelligible Latin and Law-French.

Clearly one of England's great needs was a code of laws that could be understood and known in minutest detail. Such a code, Bentham claimed, would need to meet four conditions, namely, completeness, the fewest possible number of rules qualified by generality, the expression of rules in logical order, and the employment of uniform terminology.⁸ Confident that he could draft a code that would embody the comprehensiveness mentioned, Bentham set to work.¹⁰ "With powers of mind fitted for an undertaking thus stupendous, such as in no age or country had ever been equalled, or even so much as approached; with an ardour and energy such as in no cause, bad or good, had ever been surpassed, he betook himself to the accomplishment of this work."¹¹ The more he was criticized the harder he worked. "Long and earnestly did he labour without any apparent effect; but at last some impression was made; the scales fell from the eyes of men of powerful intellects in commanding stations."¹² It was finally admitted that the law of England needed to be reconstructed.

Bentham divided legislation into two great parts—internal law which concerned the ordinances pertaining to the individual community, and international law which concerned the relations between different communities. Being chiefly interested in internal law he constructed a code for it called *Pannomion*. He arranged this code so as to embrace four minor codes, Constitu-

⁷ Bowring, *op. cit.*, XI, pp. 43ff.

⁸ *Ibid.*, V, pp. 8ff.

⁹ Montague, *A Fragment on Government*, p. 49.

¹⁰ Bowring, *op. cit.*, XI, p. 85.

¹¹ *Ibid.*, XI, p. 85.

¹² *Ibid.*, XI p. 86.

tional, Civil, Penal, and Administrative. The end he had in view was "Conduciveness to the maximum of the aggregate of happiness."¹³

With reference to the result of Bentham's codifying, Montague says that it did not consist of a complete system but of many large fragments that give an adequate idea of what the system would have been if finished, and that while he did not replace nor reconstruct English law as a whole, he furnished many valuable hints which have been adopted into English law.¹⁴ What Bentham did towards legal reform proved to be a good foundation upon which others could successfully build.¹⁵ "When we recollect how much that Bentham condemned has since been abrogated, and how much that Bentham proposed has since been adopted, and when we consider how generally in either instance, the results have justified his counsels, we must allow that for industry, for acuteness, and for an enlarged love of his kind he takes one of the highest places among those who have discussed the theory of legal reform."¹⁶

Bentham declared the need of a national code of laws. "The universal code ought to be promulgated to all. The particular codes ought to be set before the classes to which they respectively refer."¹⁷ An understanding of the law should, according to Bentham, be gained in school. The universal code should be made the chief book. "The most important parts of it might be committed to memory, and repeated as a catechism; that for example, which contains the definition of offenses and the reasons for their being ranged into classes."¹⁸ Through this it would be possible for young people to know by the age of sixteen, without undue effort, the laws of the land better than the gray-headed lawyers of Bentham's day knew them.¹⁹ Those who planned to follow certain employments should be required to make a copy of the laws pertaining to that employment as an aid to a mastery of the subject.²⁰ The laws should also be presented as a part of

¹³ *Ibid.*, XI, p. 86.

¹⁴ Montague, *op. cit.*, p. 43.

¹⁵ Bowring, *op. cit.*, XI, p. 86.

¹⁶ Montague, *op. cit.*, pp. 57ff.

¹⁷ Bowring, *op. cit.*, I, p. 158.

¹⁸ *Ibid.*, I, p. 158.

¹⁹ *Ibid.*, I, p. 158.

²⁰ *Ibid.*, I, p. 158.

divine services, being read through several times a year. Laws prescribing regulations relative to public places, markets, theatres, highways, should be posted in those places. That people of various nationalities might know the laws, they should be translated into their respective languages.²¹

In order to make a study of the laws interesting Bentham said that the reasons for their existence should be given.²² The *why* and the *wherefore* ever add much to the comprehension of difficult subjects. "Without reasons, all laws may be condemned or defended with equal blindness." "The more clearly the laws are understood, the more easily will they be retained. The reasons annexed will serve as a kind of technical memory: they will serve as a species of cement, by which to unite all those regulations which would otherwise appear as fragments and dispersed ruins." Also, laws that are founded upon reason make themselves a part of the mind, become woven into the logic of the people, influence generally the moral nature and eventually govern public opinion. Naturally obedience to the just laws, known and understood, would follow and it would be an obedience scarcely distinguishable from liberty.

When Bentham lived at Lincoln's Inn he had come into close contact with the working of England's judicial system. Its wrongs were as evident to him as the wrongs in England's system of laws. As the legal wrongs were largely due to the influence of mystery and tradition, so, too, were the judicial wrongs. Magna Charta's statement, "Justice shall be denied to no man, justice shall be sold to no man,"²³ was not being carried out in practice. "Denied it is," said Bentham, "to nine-tenths of the people; to the remaining tenth it is sold at an unconscionable price—a sale by the state as pernicious, in point of political effect, as one for the benefit of a king or a judge."²⁴ "That instrument of power which calls itself a Court of Justice has in every community without exception, had for the object of its institution, not justice, but its opposite, injustice: injustice in the shape of depredation and oppression."²⁵

²¹ *Ibid.*, I, p. 153.

²² *Ibid.*, I, p. 161.

²³ *Magna Charta*, paragraph 40.

²⁴ Atkinson, *Jeremy Bentham*, p. 120

²⁵ *Ibid.*, IX, p. 455.

The judicial system, a product of the centuries that had passed, regarded the king as the source of justice; it had a multiplied number of functionaries whose duties seemed to be to obtain the continuance of respect for their labors, and also to remain ignorant of conditions that might reveal the enormity of wrong in the department that was clothed in ermine. When a matter of controversy arose the only thing to do was to confide its untangling to those who professionally represented right and justice. The endless continuance of the case, due to the varied processes through which it must go, was not questioned but simply accepted as necessary. Neither did a litigant think that the expense attendant upon a suit should be regarded as other than necessary, for the respect which he had been reared to attribute to all who had become administrators of justice held his thoughts in abeyance. The system tended to develop corruption within itself.

These wrongs and the corruption were fully evident to Bentham and he did not hesitate to reveal them to the people. So plain to him was it that *utility* was needed for all concerned that it was not difficult for him to present the existing ills, to explain the needed reforms, and to offer a scheme for judicial justice. This scheme he presented fully in his *Principles of Judicial Procedure*, and *Rationale of Evidence*. Referring to the latter work in 1829 Edward Livingston, who had been Congressman from New York State and state representative of Louisiana, wrote Bentham as follows: "Hereafter no one can, in Criminal Jurisprudence, propose any favorable change that you have not recommended, or make any wise improvement, that your superior sagacity has not suggested."²⁶

Some of the existing ills which Bentham especially emphasized were, in his own words: (1) "Imposition of law taxes; putting out of the protection of the law all those who are unable to pay the tax. (2) Imposition of law fees, payable to the functionaries of justice: functionaries employed in giving such security as is given against injury from internal adversaries; and who might be sufficiently paid by a minute part of the expense employed in the payment of those engaged in giving security against injury from foreign adversaries. (3) Audience refused to the parties

²⁶ *Ibid.*, XI, p 23.

in the suit: the defendant not compelled to meet the pursuer in the presence of the judge: nor the pursuer admitted in person to state to the judge his demand, and the foundation on which it rests.²⁷

As remedies he proposed the removal of law taxes, and law fees; speedy trial; presence at the trial of plaintiff, defendant and witnesses. Bentham began at the very foundation itself of judicature and arranged a system for its development that would be provocative of improvement. Among other things he held that judges should be definitely trained through education, practice, and experience for the administering of justice;²⁸ that accessibility to the court of justice should be possible any hour of the day or night for Justice should sleep only when Injustice sleeps; that provisions for fair cost of justice should be made.²⁹

Bentham's plan of judicial improvement was not accepted when he presented it, by those most vitally concerned. However, in harmony with his opinions law taxes have been abolished, law fees have been reduced, and the administration of justice has been placed upon such a basis that England is proud of her judicial system. England's writers admit the evils that used to exist and they set forth in lengthy discussions the wise adjustments that have occurred in the past century.³⁰

As John Stuart Mill once remarked: "The changes which have been made and the greater changes which will be made, in our institutions, are not the work of philosophers, but of the interests and the instincts of large portions of society recently grown into strength. But Bentham gave voice to those interests and instincts; until he spoke out, those who found our institutions unsuited to them did not dare to say so, did not dare consciously to think so; they had never heard the excellence of those institutions questioned by cultivated men, by men of acknowledged intellect; and it is not in the nature of uninstructed minds to resist the united authority of the instructed. Bentham broke the spell. It was not Bentham by his own writings; it was Bentham through the minds and the pens which those writings fed—

²⁷ *Ibid.*, IX, p. 455.

²⁸ *Ibid.*, II, p. 22.

²⁹ *Ibid.*, IX, p. 515.

³⁰ *Ibid.*, IX, pp. 522ff.

through the men in more direct contact with the world into whom his spirit passed.'"³¹

³¹ Mill, John Stuart, *Dissertations and Discussions*, I, p. 332.

CHAPTER V

SOME INFLUENCES OF BENTHAM IN ENGLAND'S SOCIAL DEVELOPMENT

Social conditions in England at the approach of the nineteenth century showed crying need of improvement. The distinct line drawn between the titled and mercantile classes, the discrimination that existed between the governing and the governed, were not conducive to developing equality of individuals or general welfare and happiness. Until privilege, opportunity, and position, in and out of the governments should become possible for all without requirement of noble birth and hereditary wealth, that equality which is the basic feature of democracy could not exist. Feeling that under existing conditions property was the first essential for political position, and considering money the initial step towards the possession of property, the laboring classes strove for money and for land. The attainment of the goal was placed in the future and the workers energetically applied themselves to various activities, letting matters of government for the time being rest with the gentry. England's great mass of working people being unenlightened did not comprehend wherein they were at fault, did not understand that by their application to financial gains, meagre as these were, they were pushing forward in a sordid way that which would but increase the evils already existing in their country's social conditions.

From his knowledge of human nature, of the thinking man's desires and ambitions, and of the government's usurpation of authority, Bentham saw the utter impossibility, under the circumstances, of the laboring man's attainment of the equality which was his right. He apprehended the need of the coöperation of classes, of harmony of interests, of the breaking down of age-long barriers. Bentham's view was that the welfare of a country is naturally grounded upon the condition of its inhabitants, and its upward development in various channels is proportionate to the elimination of social injustices. As he analyzed matters, the social wrongs of his day could be overcome by the employment of

his principle of utility inasmuch as it was based upon intellectual, educational, practical, ethical, and social ideals, ideals that tended to the "greatest happiness of the greatest number." From the development and application of these ideals would come the welfare of each and all.

Again, he held that the betterment of individuals was an outgrowth of experience, which is the source of knowledge and the determinant of the worth of moral ideas. Moral ideas have a rank, or position, which, according to Bentham, is governed by the feeling of pleasure or pain, and he attempted to show that pleasure or pain depends upon seven circumstances or conditions, viz., intensity, duration, certainty or uncertainty, propinquity or remoteness, fecundity, purity, and extent.¹ Lawmakers considering a matter of legislation scientifically should determine actually the sum total of pleasures and pains in it, balance the pleasures against the pains, and so arrive at the value. This method may be shortened for a given community because, owing to the process of evolution, the community may be organized under customs, laws, rules, and institutions that are the result of many and varied experiences.²

Working upon that which was already in existence, Bentham aimed to show that the employment of utility as a means towards betterment through effective legislation was intensely practical; that utility could be so embodied in state and national legislation that it would touch directly the living activities of men in a way to advance society to higher levels.

As an aid to employing the pleasure-pain standard of measurement in acts of legislation, Bentham classified fourteen simple pleasures, namely, sense, wealth, skill, amity, good name, power, piety, benevolence, malevolence, memory, imagination, expectation, association, relief; and twelve simple pains, namely, privation, senses, awkwardness, enmity, ill name, piety, benevolence, malevolence, memory, expectation, imagination, association.³ Thus from the analysis of the fundamental elements in an individual's life, Bentham sought to construct a foundation for legislation, aiming to reach results for the people by having legislators so

¹ Bowring, *The Works of Jeremy Bentham*, I, p. 16.

² Davidson, *Political Thought in England*, p. 53.

³ Bowring, *op. cit.*, I, p. 17.

responsive to his scheme that legislation would be enacted with a view to betterment in all departments of social life.⁴

In considering the problem of England's poor, one very soon sees why Bentham had so great an interest in the amelioration of social conditions. The legislation enacted for the poor of the realm since its inception had not secured the best results either for the unfortunate poor or for the national purse. In 1536 Parliament had passed an act by means of which parishes were required to provide for the needs of their own mendicants. A poor rate, as the term came to be understood in the nineteenth century, was not then thought of and the money needed was obtained by voluntary contributions; "the 'collector' appeared in a form no more formidable than that of the parish priest, who, from his pulpit, exhorted his congregation to give according to their means, and not to forget the poor-box as they passed out."⁵ The year 1551 marked the first step in the system of poor relief which slowly developed through the succeeding centuries. "Collectors were appointed whose duty it was to make record of the name, residence, and occupation of all who apparently were able to give, as well as of those whose helpless distress entitled them to relief. In the words of the ancient enactment, the said

⁴ It is interesting to note in Ward's *Applied Sociology* the manner in which he employs two words coined by Bentham—minimization and maximization—in describing the "new ethics." "The new ethics has for its aim the minimization of pain and the maximization of pleasure." Proceeding in his discussion, Ward develops, in a manner quite Benthamic, the idea that the "new ethics" is dynamic and "recognizes that the *summum bonum* is the social weal, and aims, as light is vouchsafed, to labor for that end." Basing a part of Chapter III upon the "Claims of Feeling" Ward reaches a summary that harmonizes well with the pleasure-pain theory of Bentham. "In a pain economy, by the terms of the definition, the pains exceed the pleasures. If we give the pains the minus and the pleasures the plus sign, the algebraic sum is minus. If a man in his business finds that the debts regularly exceed the credits, he concludes that he is conducting his business at a loss. Existence may be looked upon as a business. If its debts exceed its credits, it is being conducted at a loss. * * * Without a surplus of agreeable over disagreeable feeling existence is worthless or worse than worthless. With such a surplus it has a value exactly proportional to the amount of that surplus. The purpose of applied sociology is to point out the way of first getting rid of this long-standing deficit, and then of accumulating the maximum possible surplus."

Ward emphasizes the need of scientific legislation and optimistically states that attractive legislation can be and will be achieved. Bentham developed clearly the idea of scientific legislation and the later writer in his discussion of it declares: "Nothing, however, worthy of the name of scientific legislation, i. e., legislative invention in the interests of the people, is possible except in a democracy in which all the people are intelligent, so that the representatives of the people are persons of considerable mental development."

⁵ Greenwood, *Seven Curses of London*, p. 425.

collectors were to "gently ask every man and woman, that they of their charity will give weekly to the relief of the poor." To give, however, remained optional—no more severe pressure was brought to bear against a "grudger" than that the minister or churchwardens were sent to him to exhort him to charity; but so many "curmudgeons" remained inexorable that the voluntary system continued in force no longer than twelve years. Then the statute regulating poor relief was remodelled; and it was declared good law that any person able to contribute, and declining to do so, might be summoned before a justice, who would tax him according to his discretion, and commit him to goal if he still remained obdurate."⁶

During these years the professional beggars, taking advantage of the poor fund, increased in number and Parliament attempted to cope with them by passing a law in 1572 stating that "all persons whole and mighty in body, able to labour, not having land or master, nor using any lawful merchandise, craft, or mystery, and all common labourers, able in body, loitering and refusing to work for such reasonable wage as is commonly given, should, for the first offense be grievously whipped, and burned through the gristle of the right ear with a hot iron of the compass of an inch about."⁷

Among the later enactments were the statutes of Elizabeth for the years 1598 and 1601, under the provisions of which the English system of poor relief continued for practically three hundred years. In the former act appeared the statement: "taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes, mines, etc., such sums of money as they shall require for providing a sufficient stock of flax, hemp, wool, and other ware or stuff to set the poor on work, and also competent sums for relief of lame, blind, old, and impotent persons."⁸ From the latter act three great principles are derived: "(1) that every parish was to be primarily responsible for the maintenance of its own poor, and not for the poor of other parishes; persons who could not or would not work were to remain in the parish in which they were born, or in which they had lived for the last three years; (2) that the means for the

⁶ *Ibid.*, p. 215.

⁷ *Ibid.*, pp. 215-216.

⁸ *Ibid.*, p. 216.

maintenance of the poor was to be provided by a parochial tax, to be imposed upon the landed property of the parish by parish officers as a general and uniform burden; (3) the administration of the system was to be vested in church-wardens, and in two, three, or four substantial householders to be appointed annually by justices of the peace as 'overseers' of the poor.'⁹ Naturally there were many among the so-called pauper class who infringed upon the aims of the laws, and many among the overseers who abused charges entrusted to them.

Approaching the close of the seventeenth century there was the Act of 1691 "passed to lessen 'the many inconveniences' which, said the preamble, 'do daily arise by reason of the unlimited powers of the overseers, who do frequently upon frivolous pretences, but chiefly for their own private ends, give relief to what persons and number they see fit.'"¹⁰ Gradually the administration of the poor relief was transferred more and more from the officers of the parish to the justices "until in the latter half of the eighteenth century the Justices were practically supreme."¹¹

This greatly affected the social life of England. "One of the most mischievous practices was that which was established by the justices for the county of Berks in 1795, when in order to meet the wants of the labouring population—caused by the high price of provisions—an allowance in proportion to the number of his family was made out of the parish fund to every labourer who applied for relief. This allowance fluctuated with the price of the gallon loaf of second flour, and the scale was so adjusted as to return to each family the sum which in a given number of loaves would cost beyond the price, in years of ordinary abundance. This plan was conceived in a spirit of benevolence, but the readiness with which it was adopted in all parts of England clearly shows the want of sound views on the subject. Under the allowance system the labourer received a part of his means of subsistence in the form of a parish gift, and as the fund out of which it was provided was raised from the contributions of those who did not employ labourers as well as of those who did, their employers, being able in part to burden others with the payment

⁹ Taylor, *Origin and Growth of the English Constitution*, II, pp. 189-190.

¹⁰ Redlich and Hirst, *Local Government in England*, I, p. 101.

¹¹ *Ibid.*, I, p. 101.

for their labour had a direct interest in perpetuating the system. Those who employed labourers looked upon the parish contribution as part of the fund out of which they were to be paid, and accordingly lowered their rate of wages. The labourers also looked on the fund as a source of wage. The consequence was, that the labourer looked to the parish, and as a matter of right, without any regard to his real wants; and he received the wages of his labour as only one and a secondary source of the means of subsistence."¹²

The statesmen of England were not unaware of the insufficiency of the Poor Laws and of their administration; but so long as additional means of giving to those who took advantage of the funds were provided, the government realized that the discontent of its subjects was prevented from developing into despair and revolution.¹³ Pitt's Poor Law Bill of 1796, which aimed at still further allowances for the poor and which has been stigmatized as "a monstrosity of misguided sentiment and economic fallacy,"¹⁴ called forth Bentham's *Observations on the Poor Bill Introduced by the Right Honourable William Pitt* in February, 1797. The *Observation* is a critical analysis of the various clauses of the bill. A citation from the Cow-Money Clause indicates the keenness of Bentham's analytical mind: "Hitherto the danger of profusion has confined itself to *income*; it now threatens *capital*. In the *preceding* clauses the allowances authorized, how much soever too ample, continued to be, as they are under the existing system, in the first instance occasional only, at the worst gradual, accommodated as to their rate of efflux to the influx of the fund from which alone they could be derived. Here *capital* is given under the very *name* of capital, and as a substitute to income. The pension *during pleasure* is instantly converted into a pension *for years* or *during life*, and that pension *at the same instant* bought out by a *gross* sum, leaving the demand for a *fresh* pension to recur at any time, to be again bought off, and so *toties quoties*. The spigot was *there* opened, *here* the bung-hole.

"It would be *something* in the way of security, though surely

¹² Greenwood, *op. cit.*, pp. 217-218.

¹³ Redlich and Hirst, *op. cit.*, I, p. 88.

¹⁴ *Ibid.*, I p. 88.

not much, if the cow were safely lodged in the cow-house of the indigent to whom the possession of her is to be an inexhaustible spring of affluence. But even *this* security, slender as it is, is not provided. The capital is to be advanced, not in the shape of the cow, but in the shape of *hard money*, with which the object of this extraordinary bounty is left perfectly at liberty to lay in a fund either in *milk* or *gin* according to his taste.

"The cow *dies* or is *stolen*, or (what is much more likely) is *supposed* to be stolen, being clandestinely *sold* to an obliging purchaser at a distance. What is to be done? '*Want of relief*' warranted the *first* cow; the same cause will necessitate a second—limit who can the succeeding *series* of cows: The disappearance of the *first* cow (it may be said) will excite *suspicion*; the disappearance of a second cow will *strengthen suspicion*; true, but upon a mere suspicion without *proof* will a family be left to starve?"¹⁵

Bentham corresponded with some of the most influential members of Parliament relative to Pitt's bill. He insisted that was a specimen of empiric, not scientific legislation, and had its measures been put into operation for any length of time, the results would have been more disastrous "to the ultimate welfare of the labouring classes, than the most disastrous revolution of modern times."¹⁶ Undoubtedly the *Observations* materially aided in defeating the bill of 1796.

England's effort in the beginning of the eighteenth century to institute the workhouse as a help in solving her pauper problem cannot be regarded as successful. The results of different measures that culminated in Gilbert's Act of 1782 had evidenced the failure of Parliament to meet the exigencies of the times. The legislation, by systematic methods and upon a national scale, had fostered pauperism. The industrial revolution which developed during the Napoleonic Wars destroyed the old conservatism of England and so modified the economic conditions that the errors in the workings of Poor Laws were accentuated. "The war had left an enormous national debt, a depreciated paper currency, a heavy income tax, a poor law causing more misery than it relieved, and a system of agriculture depending on a price of food which only the most rigid protection could keep

¹⁵ Bowring, *op. cit.*, VIII, p. 447.

¹⁶ *Ibid.*, VIII, p. 440.

up in times of peace."¹⁷ "The poor law as it existed in full vigor at the close of the war, went further than any other human device for diminishing the funds for the maintenance of labour, and at the same time increasing the number of labourers."¹⁸ "But the law was not good and the administration was much worse, for it was in the hands of the Justices of the Peace, drawn from the landed gentry, and embodying that spirit of autocratic dilettantism which marked the internal government of England from 1800 to 1830."¹⁹

Statesmen of England, characterized as radical, among whom were Romilly and Brougham, were earnest in their labors, in and out of Parliament, to make necessary and helpful changes in the legislation. The chief result of their activities was the appointment of a commission to investigate conditions in the country. The influence of Bentham as he conversed with his friends in his home, or as he worked upon his manuscripts, went forth into the hall of Parliament. Chadwick, a disciple and friend of Bentham, became a member of the Poor Law Commission in 1833 and he worked with unceasing energy to obtain the material necessary for the Commission Report. The Bill of 1834, the fruition of the Commission's work, treated the subject of poor relief as a whole and is regarded as a reform more extensive and systematic than any attempted since the Act of 1601.²⁰

An analysis of the bill of 1834 reveals the principles of Bentham relative to pauperism and its treatment as set forth in his *Constitutional Code*. At the very outset of their work, the Commissioners employed the scientific method suggested by Bentham; *e. g.*, working as a central authority they divided the territory for investigation into districts, assigned an assistant commissioner to each district, and required a detailed report from each assistant. From the phraseology of the statute one readily picks out as illustrations of points developed in Bentham's *Codes* (1) a central authority of administration; (2) the poor law district superseding the parish; (3) the determination of boundaries conforming with geographical convenience rather than with histori-

¹⁷ Wallas, *Life of Francis Place*, p. 158.

¹⁸ Martineau, *Thirty Years' Peace*, I, p. 116.

¹⁹ Redlich and Hirst, *op. cit.*, I, p. 102.

²⁰ *Ibid.*, I, p. 108.

cal custom; (4) the payment of officers appointed by the Board of Guardians.

A comparison of costs for the relief of the poor before and after 1834 indicates one phase of the Commissioners' achievement. "The average annual expenditure on the relief of the poor in the five years preceding the Act of 1834 was 6,754,000 pounds, and in the five years succeeding the Act, 3,567,000 pounds."²¹ Referring to another phase, Wallas says: "The two Local Government Bills (the New Poor Law of 1834 and the Municipal Reform Bill of 1835) were the result not of the official Whig tradition as represented in the Cabinet, but of 'philosophic radicalism' acting through Royal Commissioners. Edwin Chadwick, Secretary of the Poor Law Commission (1832-34), and Place's friend, Joseph Parkes, Secretary to the Municipal Corporation Commission (1833-35) were both personal disciples of Jeremy Bentham, and the Bills themselves were the embodiment of principles which the Benthamites had discussed for twenty years."²²

Many years before 1834 Bentham had said: "We think of the poor in the way of charity, for to deal out charity gratifies not only benevolence, but pride. We think much of them in the way of charity, but we think little of them in the way of justice. Justice, however, ranks before charity; and they would need less charity, if they had more justice."²³ The bill of 1834 lived through the opposition that met its promulgation; and additional legislation since that year has further employed the element of justice which Bentham emphasized as essential to ameliorating social conditions in England.

Bentham also discussed the English system of imprisonment for debt. In this system as it was employed he saw much that was wrong and he explained different matters relative to it in minute detail showing how reform methods might be introduced. "Imprisonment for debt has not the sanction of antiquity,"²⁴ for there was a time when it did not exist in England. Its evolution dates from the Statute of Marlbridge, 52 Henry III, c.23, and proceeds until "little by little the principle of the right of one man to seize the body of another in an execution for debt became

²¹ *Ibid.*, I, p. 110.

²² Wallas, *Life of Francis Place*, p. 330.

²³ Bowring, *op. cit.*, II, p. 579.

²⁴ Parry, *The Law and the Poor*, p. 40.

recognized by statutes and by custom until the wrongs it caused reached such a scandalous pitch in the eighteenth century that some reform of it became inevitable.’²⁵ With the passing years harshness and cruelty in the treatment of unfortunates in debtors’ prisons increased. There are many accounts and descriptions in the prison annals of events that happened. “The tragedies of imprisonment for debt occurred but they took place behind closed doors and the world only heard of them by slow degrees. At length, however, the constant repetition of the miseries of the poor debtors who languished in prison, wasting their lives and eating out their hearts in despair, began slowly to convince the man in the street that there really was something wrong with the world and that the cup of human misery of some of their fellow creatures was slopping over into the saucer of despair.”²⁶

Towards the close of the eighteenth century, debtors formed a large part of the population of England. Frequently the families of convicted persons went to live in the jail. Jails were mainly private institutions and their managers stooped to all ways of earning money at the expense of the inmates. “The use of fetters was universal, although even then deemed illegal; all alike, tried and untried, male and female, young and old, were laden with chains so that the gaoler might secure another perquisite, the bribe he demanded for easement of irons. Prisons were dark because their managers objected to pay the window tax; water was costly, and therefore scantily supplied; sanitation, as we understand it, did not exist in those days anywhere, least of all in the gaols. Pauper prisoners, by far the largest proportion, were nearly starved, for there was no regular allowance of food; their beds of old littered straw reeked with filthy exhalations; if they were ill the doctors feared to approach them; chaplains held aloof and the dying were left to the ministrations of an occasional self-devoted layman.”²⁷ Bankruptcy, insolvency, indebtedness, sent many to these jails and many who were innocent of crime upon their entrance, emerged from custody possessed of knowledge that was far from beneficial.²⁸

²⁵ *Ibid.*, p. 41.

²⁶ *Ibid.*, p. 43.

²⁷ Traill, *Social England*, V. Sec. II, p. 657.

²⁸ Bowring, *op. cit.*, I. p. 429.

Bentham urged careful investigation of the details of cases that involved the problem of debt in any of its forms, and the employment of punishment commensurate with the offense. He distinguished between natural pleas of humanity favoring the debtor and justice due the creditor. "Humanity in her soft colours, decks the breastplate of the debtor's champion: Justice, in her grave and sombre tints, that of the champion of the injured creditors. In the eye of the man of humanity, all virtue is on the debtor's side—on the creditor's, nothing but vice. . . . If the blameless debtor, in whose instance all punishment is undue, be consigned to a course of suffering more severe, because more protracted, than any which the worst of criminals would have been consigned to under the name of punishment,—it is because it would be requisite to learn, whether he were blameless or blameable, that trouble which the judges have one and all been resolved not to take. . . . Seeing him where he is, 'Let him out!' says the man of sentiment; for thus far does the force of his optics penetrate. Yes: true enough, if there he be, and have nothing wherewith to pay, nor have done anything for which it is fit he should be punished, the sooner he is let out the better. But do you know if he have wherewith to pay?—do you know if he have done that for which he ought to suffer?—and above all, do you know how and why he came there?—by whose power, and to, not to say for, whose benefit? These are of the number of those questions which would be *invidious*, and are therefore never asked."²⁹

Lord Brougham was one of the radicals who voiced in Parliament the ideas of Bentham upon this subject. He presented in detail to the House of Lords the evils in the English system of imprisonment for debt. "He laid down the principle that debt should never be treated as a crime and still less as a crime to be punished at the sole will and pleasure of the creditor, and eloquently called upon the peers to wipe out this foul stain from our civil code."³⁰ Due to the fact that the matter of imprisonment for debt was constantly agitated, changes were made as a result of the work of commissioners. In 1835, a comprehensive bill for the abolition of imprisonment of debtors was introduced into

²⁹ *Ibid.*, VI, pp. 180ff.

³⁰ Parry, *op. cit.*, p. 48.

Parliament. The *Westminster Review*, commenting on this bill, said: "If the Ministerial Bill for the abolition of the Law of Imprisonment *pass into a Law*, its effects will not be second in importance to the Reform Act itself."³¹

Parliament discussed the abolition of arrest on mesne process in 1837 and it was legislated out in 1839. Bentham had strongly condemned the mesne process³² and Atkinson says its ultimate abolition may be credited to him.³³ "Mesne process, translated into English, means middle process, and the idea was to lock a defendant up in the middle of a trial and keep him there in case it turned out at the end of the proceedings that he owed the money. It was as popular with the sharks of the eighteenth century as the present imprisonment is with money-lenders and tally-men of to-day. Any person who would make an affidavit that another owed him twenty pounds or more could lock him up pending the trial and, unless the victim could find the money and pay it into Court, he remained in the sponging house until the trial came on."³⁴

Soon after the abolition of the mesne process, a commission was appointed to investigate the entire matter of imprisonment for debt. Finishing the work it recommended abolition. A bill introduced in 1844 set forth the need of distinguishing between blameless debtors and defrauders. Finally the Debtors Act of 1869 became a law, and it has met in a large measure the demands that had so long been urged. There are defects in the application of clauses in this act and there are still opponents of the abolition of imprisonment for debt, but the change from indiscriminate imprisonment under former regulations to the enactments now in force is in the right direction.³⁵ Bentham's challenge, "People of England! when will you open your eyes—how long will ye be the dupes of sophistry, hypocrisy, and masquerade?"³⁶, has borne fruit in the reform of a system which has such a dark and distressing history.

"Crime has been well defined as a failure to abide by or live up to a standard deemed essential by society. Criminals are

³¹ *Westminster Review*, Vol. XX, p. 354.

³² Bowring, *op. cit.*, Vol. VI, p. 179.

³³ Atkinson, *op. cit.*, p. 232.

³⁴ Parry, *op. cit.*, p. 45.

³⁵ *Ibid.*, pp. 49ff.

³⁶ Bowring, *op. cit.*, VI, p. 178.

such by accident or inclination, and under a perfect system of government they would be saved from the one and cured of the other.''³⁷ Crime, an evil to society, a menace to development, has from earliest times been combated by the infliction of physical pain as a corrective. Bentham analyzed this subject, and by estimating, according to his scheme, the balance struck in the pleasure-pain theory he showed how punishment might be employed so as to result in benefit to mankind. Granted that there is pleasure to the agent in committing a crime, the punishment as a corrective result to society must outweigh that pleasure in order to offset the pain that the crime inflicted upon society.

Bentham wrote exhaustively upon the subject of crime, entering into its various phases and its punishments.³⁸ He understood from his study of the subject, and from his knowledge of English legal proceedings dealing with crime, that in existing conditions there was much averse to his guiding principle, utility. In the discussion of criminology he stated five objects that should be derived from punishments inflicted: (1) prevention of similar offenses, (2) reformation, (3) incapacitation, (4) compensation or satisfaction to the person injured, (5) economy.³⁹ Since it falls to the province of legislators to fix the penalties for wrongdoing, they should keep in mind the need of certainty and impartiality in punishment. "The more completely the scale of punishments is rendered certain, the more completely all the members of the community are enabled to know what to expect. It is the fear of punishment, in so far as it is known, which prevents the commission of crime. An uncertain punishment will therefore be uncertain in its effects."⁴⁰

Bentham's exposition of the subject of crime and capital punishment, strongly supported by historical fact, indicates that the general welfare of man was far from realization. The large pauper class who were driven by poverty to stealing; the difficulty attending the obtaining of bare necessities in the way of food, which increased the number of poachers; the difficulties of travel, which swelled the number of highway robbers; the dark, un-

³⁷ Traill, *op. cit.*, VI, Sec. II, p. 853.

³⁸ Bowring, *op. cit.*, I, pp. 51-168.

³⁹ *Ibid.*, I, pp. 491ff.

⁴⁰ *Ibid.*, I, p. 516.

lighted streets of urban centers, which aided in the commission of crimes; all these conditions had multiplied the number of offenses for which the death penalty was inflicted. "Barbarous as were the provisions of our criminal code at this period, it is, perhaps, worth while to note that they had become largely in-operative. Judges and jurors alike rebelled against a too rigorous enforcement of the law; as is ever the case, any attempt to exact a penalty grossly disproportioned to the offense served only to shock the general sense and to excite a spirit of compassion with the accused. Between 1803 and 1810 great numbers of prisoners were found not guilty and discharged; and, though no less than 1872 persons were sentenced to death for petty thefts and divers small offenses against property, one only of those sentences was, in fact, executed."⁴¹

From 1808 to 1816 Romilly introduced in Parliament a number of bills dealing with the mitigation of the death penalty. His bill of 1808 abolished capital punishment for the offense of stealing from a person privately to the value of five shillings. His measures of 1811 were rejected and Lord Ellenborough's criticism, bemoaning the fact that the desire existed which favored the changing of laws of long standing, shows how hard it was to yield in a matter backed by the authority of tradition.⁴² Romilly's bill of 1816 proposed abolishing the death penalty for shoplifting to the value of five shillings. Statistics cited by him showed that in 1785 twenty persons were executed the same morning in London for this offense, and that then (1816) a child not ten years of age was incarcerated in Newgate awaiting the carrying out of the fearful penalty for the same offense. Romilly's bill failed to pass because the members of Parliament argued that to lessen the penalty would increase the number of criminals.

The preface to the Newgate Calendar of 1824 set forth the conditions existing as seen by contemporaries: "The penal laws of the British Empire are, by foreign writers, charged with being too sanguinary in the cases of lesser offenses. They hold that the punishment of death ought to be inflicted only for crimes of the highest magnitude; and philanthropists of our own nation have accorded with their opinion. Such persons as have had no oppor-

⁴¹ Atkinson, *Jeremy Bentham*, p. 145.

⁴² Martineau, *op. cit.*, I, p. 101.

tunity of inquiring into the subject will hardly credit the assertion that there are above one hundred and sixty offenses punished by death."⁴³ Bentham was among the philanthropists mentioned. He was one of the first and one of the chief agitators against the idea that laws "scarcely ever carried into execution would operate through the influence of what they called 'a vague terror.' As if any terror, as a preventive or a motive to good, was ever vague. The system was entirely kept in existence by the incompetence and idleness of the law-makers and the law administrators."⁴⁴ Bentham claimed "that the *certainty* of a comparatively slight penalty would prove a far more efficient check than the *possibility* of a most extravagant punishment."⁴⁵ *Plus on peur augmenter la certitude de la peine, plus on peut en diminuer la grandeur.*⁴⁶

Constant agitation usually yields results. Consequently during the ministries of Peel and Russell, successive measures were passed that reduced, from time to time, the number of offenses for which capital punishment might be inflicted. The slight changes for which Romilly asked in the first quarter of the nineteenth century, the improvements presented in the writings of Bentham through the first third of the century, were more than attained by 1868 when public executions were prohibited by law.⁴⁷ English lawmakers in enacting legislation which has so greatly improved the criminal law may not have deliberately weighed matters according to Bentham's pleasure-pain theory, but in the radical change developed within a generation after his death his influence can clearly be traced.

A parallel development to reform in the law of crime is Bentham's work in connection with prison reform. While visiting his brother in Russia in 1786 or 1787, he was much impressed with his brother's scheme for a large workshop. With this as a basis he wrote a series of letters which embodied his ideas upon the Panopticon.⁴⁸ This word, derived from two Greek words meaning "everything" and "place of sight," is the name which

⁴³ Parry, *op. cit.*, p. 189.

⁴⁴ Martineau, *op. cit.*, I, p. 103.

⁴⁵ Atkinson, *op. cit.*, p. 145.

⁴⁶ Bowring, *op. cit.*, II, p. 387.

⁴⁷ Cross, *A History of England*, p. 903.

⁴⁸ Bowring, *op. cit.*, IV, pp. 37-66.

Bentham gave to the prison building which would meet England's needs much better than Newgate or any of the many houses that served as places of detention.

Numerous accounts have portrayed the evils of the English prison system, its utter lack of care and of attention to the inmates of prisons, and its very general influence in spreading crime.⁴⁹ Bentham studied the problem fully, investigating the discipline and management which Howard had revealed. He devised the plan of a prison building circular in form, with cells so arranged that they could be seen from the center of the building.⁵⁰ The inmates, separated from each other, employed, given an opportunity to learn useful trades, and provided with means of becoming educated, were to be considered as worthy of help. Charts, descriptions, explanations, made the author's system clear. When he presented his plan to the government authorities, his offer to erect a building and undertake its management was accepted and Bentham went so far as to purchase a site and begin the work of construction. "The design of building a Panopticon prison lingered from 1791 to 1813, when by the erection of another prison, without any of the advantages, and more than ten times the expense, it was finally extinguished."⁵¹ It seems that Bentham had incurred the displeasure of George III

⁴⁹ Ashton, *Dawn of the XIX Century in England*, pp. 453-459; Ashton, *Eighteenth Century Waifs*, pp. 227ff; Roscoe, *The English Scene in the XVIII Century*, p. 275.

⁵⁰ Investigation of the general condition of American prisons made under the direction of the American Prison Association reveals, as late as the present decade, startling facts. "Little children are kept in rooms with polluted and diseased adults; a thoughtless lad is thrust by the hand of our country's law in the school of vice and crime, taught by trained scoundrels;—a poor insane victim of brain disorder howls all night in company with ruffians; an honest fellow, unable to pay a fine for a spree is locked in with burglars and thieves."—*Survey*, Vol. 34, p. 84.

Compare with plan presented for cell house at Joliet, Illinois. "Mr. Zimmerman proposes to build circular-shaped cell houses, about 120 feet in diameter, placing the cells against the cell house wall, thus assuring direct light and air. Now comes the novelty. Instead of having an open front of steel bars, heavy glass will be fitted in the open space between these bars so as to make a completely closed room out of the cell. A full view, however, of this room is possible from a central point. This central point is a steel shaft in the center of the cell house, enclosing a circular stairway. The stairway will be as high as the highest tier of cells, and from a position half-way up the circular stairway, which is completely sheathed with steel, the guard within the "conning tower" has a full view of each and every cell, at the mere turn of his head."—*Survey*, Vol. 27, p. 1576.

The new State Prison of Illinois at Joliet consists of eight cell houses grouped around a central dining room. The plans of these buildings reveal many points that tally with Bentham's Panopticon scheme. (See *Scientific American*, Vol. 116, p. 65, Jan. 13, 1917.)

⁵¹Bowring, *op. cit.*, IV, p. 171.

by his "Plan for the Judicial Establishment in France" and the king withdrew his support. The long years of thought and anxiety, the efforts made to win the approval of influential statesmen—all ended in keen disappointment and loss. Parliament finally allowed £23,000, by no means a full monetary restoration for the funds Bentham had advanced in the enterprise.

Wilberforce said of Bentham in 1811: "Never was anyone worse used than Bentham; I have seen the tears run down the cheeks of that strong-minded man through vexation at the pressing importunity of creditors and the insolence of official underlings, when, day after day, he was begging at the Treasury, for what was, indeed, a mere matter of right. How indignant did I often feel when I saw him thus treated by men infinitely his inferiors."⁵² In 1830-31 Bentham wrote the *History of the War between Jeremy Bentham and George the Third. By one of the Belligerents*, a book containing an account of the Panopticon scheme.⁵³

In 1835 a commission was appointed to investigate prison conditions. Commenting upon its work, the *Westminster Review* said: "There are probably many questionable points, especially such as relate to the condition of the most unfortunate classes; and of this sort, the treatment of the poor creatures who are driven by poverty to crime, deserves the most anxious consideration. If indeed worthier motives did not supervene, there is yet the palpable one of the costly worthlessness of the present system whereby the comparatively innocent is destined, by contact with hardened vice, to be doomed to lasting crime. In the Report there are several excellent plans on the Panopticon system of Bentham."⁵⁴

During the succeeding years of the nineteenth century the lawmakers of England have given much consideration to prison reform. They have made possible the reformation of wrongdoers, and have looked to the education of young unfortunates as a means of lessening criminal tendencies. "But uniformity in prison discipline has been a potent factor, and has told upon the contingent floating in and out of prison. The convicted offender

⁵² Wilberforce, *Life of Wilberforce*, II, p. 71.

⁵³ Bowring, *op. cit.*, XI, p. 96.

⁵⁴ *Westminster Review*, Vol. 23, p. 427.

is certain that wherever he may find himself he will be under precisely the same rules, will eat the same scanty fare, do much the same labour. There is no distinction now between localities; the punishment is alike for all. No administrative reform in recent years has been more beneficial than the concentration of prison management under the central authority of the State. This was effected by the Prisons Act of 1877, when full powers were vested in a Board of Prison Commissioners. Great economy was the immediate result, for prisons were at once cut down in number from 114 to 56 with a corresponding saving on staff, * * * The prisons of England can challenge the most searching investigation, and all who have compared them with the best in foreign countries must admit that ours are inferior to none.'⁵⁵

It has been well said that, although Bentham himself was not permitted to carry out the work to which he gave so large a part of his time, yet he must "be regarded as one of the great reformers of prisons and an eminent successor to Howard."⁵⁶ In his many letters and tracts on the subject and in his *Principles of Penal Law* will be found the germs of most modern reforms in regard to the treatment of criminals.'⁵⁷

⁵⁵ Traill, *op. cit.*, VI, Sec. II, pp. 853ff.

⁵⁶ *Dictionary of National Biography*, IV, p. 271.

⁵⁷ Among these reforms may be mentioned the following:

1835, employment of the principle establishing separate cells for criminals;

1837, Act of Parliament by which the number of crimes for which capital punishment could be inflicted was reduced to six;

1847, Act of Parliament creating the Poor Law Board;

1868, prohibition of public executions;

1869, abolition of imprisonment for debt;

1871, Act of Parliament creating the Local Government Board;

1877, the Prisons Act;

1898, Criminal Evidence Act;

1903, Poor Prisoners Defence Act; and

1907, Court of Criminal Appeal Act.

CHAPTER VI

BENTHAM'S FRIENDS AND ENGLISH REFORM

“The history of any definite ‘school’ of philosophic or political opinion will generally show that its foundation was made possible by personal friendship. So few men devote themselves to continuous thought that if several think on the same lines for many years it is almost always because they have encouraged each other to proceed. And varieties of opinion and temperament are so infinite, that those who accept a new party name, and thereby make themselves responsible for each other’s utterances, are generally bound by personal loyalty as well as by intellectual agreement.

“The ‘Benthamite’ or, as it became later, the ‘Utilitarian’ school * * * was no exception to this rule. Bentham’s writings from the year 1776, when he published the *Fragment on Government*, would in any case have had their effect. But the enormous influence, which, towards the end of his life, he exerted upon liberal thought in England, was very largely due to the care which he then took to secure that a few able men should always enjoy the most complete intimacy with himself and each other.”¹

Jeremy Bentham numbered among his friends statesmen of many countries. As the years passed he entertained in his home those whom he esteemed. His hospitality was delightful, his companionship helpful, and his influence inspiring. He was a keen judge of human nature, and he singled out for his most favored friends men who promulgated his teachings. It was decidedly for humanity’s good that the Hermit of Queen’s Square Place received frequently into his home his disciples, and, by conversing with them there, became the indirect initiator of bills that have made for social and political progress.

In his boyhood and young manhood Bentham did not have close friends. The publication of his *Fragment on Government* paved the way for the formation of a warm friendship with the

¹ Wallas, *Life of Francis Place*, p. 65.

Earl of Shelburne. However, Shelburne did not meet the author until 1781 after Blackstone had passed away. His first visit to Bowood proved to be Bentham's introduction to influential friends. Lord Shelburne as a careful, attentive, and considerate host made this visit very pleasant.² As one who understood Bentham's worthy, although shy, manliness, he graciously, yet tactfully, extended other invitations to him.³ An extract from one of Shelburne's letters, written in June, 1788, shows how well the former prime minister understood the obscure tenant of Lincoln's Inn: "I solemnly assure you, that it has been not only on my mind, but upon my heart, to find out this parson's house at Hendon, and to pay my court to you, not to thank you for your magnificent present of not only a most magnificent, but very useful map in the present situation, because I know your nature makes you above accepting acknowledgments; but to tell you how much we wish to see you at Bowood. I am so tired of the whole human race, that we propose to bury ourselves for some time; but as happily all desires return after a certain abstinence, you will find me very happy to make peace with my fellow creatures through you, and to begin my return to society in London, by profiting of yours for some time in the country."⁴ The close intimacy of these two friends is manifested by the fact that when Shelburne was bereaved of Lady Shelburne in 1789 Bentham was the only male friend to whom he turned for consolation.⁵

From Bentham's own pen a description of Lord Shelburne can be obtained: "His manner was very imposing, very dignified, and he talked with vague generalities in the House of Lords in a very emphatic way, as if something grand were at bottom, when in fact there was nothing at all."⁶ "Yet there was about him a good deal of sympathy, of intelligent sympathy; a curious mixture too of what was natural and what was factitious. He had a sort of systematic plan for gaining people."⁷ "Lord Lansdowne had a way of talking in fits and starts. His mind seemed always in a state of agitation with the passion of ambition and the desire

² Bowring, *The Works of Jeremy Bentham*, X, pp. 88-114.

³ *Ibid.*, X, p. 195, 279, 306.

⁴ *Ibid.*, X, p. 183.

⁵ *Ibid.*, X, p. 88.

⁶ *Ibid.*, X, p. 116.

⁷ *Ibid.*, X, p. 117.

of splendour. He was never much at ease, for he always outran the constable, and involved himself monstrously in debt."⁸ "Lord Shelburne had a wildness about him, and conceived groundless suspicions about nothing at all."⁹ "He caught hold of the most imperfect scrap of an idea, and filled it up in his own mind—sometimes correctly—sometimes erroneously." "He was a favorite of the kind, who promised to make him a duke."¹⁰

Bentham was strongly attached to Lord Shelburne and was always grateful for the aid that he had received from the statesman. Crediting Shelburne with having made him think that he could do something, Bentham more and more after 1781 gave attention to the development and the spread of his ideas. Studying, thinking, writing, traveling, in the truest sense a citizen of the world, Bentham's influence increased. After he settled at Queen's Square Place, those whom he entertained as guests were, through a period of more than forty years, the personal carriers of his doctrines to the outside world and into the halls of Parliament. In considering the members of Parliament who were Bentham's friends, knowledge is gained as to how his principles and theories were disseminated.

Samuel Romilly (1757-1818), the distinguished advocate, was introduced to Bentham by George Wilson. This acquaintance, formed before Bentham made his visit to Russia, later ripened into warmest friendship. It was their mutual respect for animals that was the bond of union between the two men—a sentiment of tenderness that naturally meant more when applied to the discussions of public issues.¹¹ Lord Brougham said that Romilly "looked up to Mr. Bentham with the almost filial reverence of a pupil for his tutor."¹² Bentham's characterization of Romilly is: "He was a man of great modesty,—of few words,—of no conversation."¹³ "Few persons have ever attained celebrity of name and exalted station in any country, or in any age, with such unsullied purity of character, as this equally eminent and excellent person. His virtue was stern and inflexible, adjusted, indeed, rather to the rigorous standard of ancient morality than

⁸ *Ibid.*, X, p. 186.

⁹ *Ibid.*, X, p. 117.

¹⁰ *Ibid.*, X, p. 116.

¹¹ *Ibid.*, X, p. 186.

¹² Hansard, *Parliamentary Debates*, 38, p. 1164.

¹³ Bowring, *op. cit.*, X, p. 186.

to the less ambitious and less elevated maxims of the modern code. * * * He was, in truth, a person of the most natural and simple manners, and one in whom the kindest charities and warmest feelings of human nature were blended in the largest measure with that firmness of purpose and unrelaxed sincerity of principle, in almost all other men found to be little compatible with the attributes of a gentle nature and the feelings of a tender heart. An extraordinary reach of thought; great powers of attention and of close reasoning; a memory quick and retentive; a fancy eminently brilliant, but kept in perfect discipline by his judgment and his taste, which was nice, cultivated, and severe, without any of the squeamishness so fatal to vigor; these were the qualities which, under the guidance of the most persevering industry, and with the stimulus of a lofty ambition, rendered him unquestionably the first advocate, and the most profound lawyer of the age he flourished in."¹⁴

This very able man, Romilly, "mighty brisk and alert,"¹⁵ was often at Queen's Square Place. He was "among the few who could ever induce Bentham to quit his Hermitage and mingle with the world. They met so frequently, that though multitudes of communications passed between them, they consisted principally of short notes, making appointments at each other's houses, or arrangements, almost always terminating in personal interviews. Romilly's attachment to Bentham was most affectionate,—his reverence for his opinions and character so great,—and their mutual intercourse was to each a source of varied and virtuous enjoyment."¹⁶ Having visited Bentham at Ford Abbey, Romilly described the surprise he experienced upon finding his friend so elegantly housed. "The grandeur and stateliness of the buildings, form as strange a contrast to his philosophy, as the number and spaciousness of the apartments, the hall, the chapel, the corridors, and the cloisters, do to the modesty and scantiness of his domestic establishment. We found him passing his time, as he has always been passing it since I have known him, which is now more than thirty years, closely applying himself, for six or eight hours a day, in writing upon laws and legislation, and

¹⁴ Brougham, *Works*, Vol. II, pp. 363-364.

¹⁵ Bowring, *op. cit.*, X, p. 457.

¹⁶ *Ibid.*, X, p. 504.

in composing his Civil and Criminal Codes: and spending the remaining hours of every day in reading, or taking exercise by way of fitting himself for his labours, or, to use his own strangely invented phraseology, 'taking his ante-jentacular and post-prandial walks,' to prepare himself for his task of codification. There is something burlesque enough in this language; but it is impossible to know Bentham, and to have witnessed his benevolence, his disinterestedness, and the zeal with which he has devoted his whole life to the service of his fellow-creatures, without admiring and revering him."¹⁷

These two men, Romilly and Bentham, masters of the legal profession, earnestly worked together in efforts to secure legal reform. Bentham freely placed his "Manuscript writings, rough fragments, printed proofs," at Romilly's service. "Having given to the matter," wrote Bentham, "that softening which his temper suggested and policy required, illustrating and enriching it with such facts as his experience had brought within his observation, Romilly made it up into one of those pamphlets which bear and do so much honor to his name."¹⁸

Francis Place (1771-1854) may be numbered among the close friends of Bentham. James Mill introduced the two men in 1812,¹⁹ and in August of 1817 Place became a disciple of the philosopher. From a two months' visit at Ford Abbey in that year the friendship strengthened so that after 1819 the elder man relied more and more upon the companionship of the younger. Place writes of Bentham as "my old, very dear friend," and the two men living within two minutes' walk of each other visits back and forth occurred often, as Place writes "each of our houses was as frequently entered by either as his own."²⁰ Bentham's diary from 1821 to 1825 makes mention of many books loaned to Place. Place "became intimate with the great man; helped him in business affairs; and was one of the disciples employed to prepare his books for publication."²¹ Writing to Dumont in 1817 Romilly said of Place: "He is self-educated, has learnt a great deal, has a very strong natural understanding, and possesses great influence in Westminster, such influence as

¹⁷ *Ibid.*, pp. 478-479 note.

¹⁸ Atkinson, *Jeremy Bentham*, p. 153.

¹⁹ Wallas, *op. cit.*, p. 72.

²⁰ *Ibid.*, pp. 75, 79, 80.

²¹ Stephen, *English Utilitarians*, II, p. 17.

almost to determine the elections for members of Parliament. I need hardly say that he is a great admirer and disciple of Bentham.'²²

Place, of humble birth, earnest, energetic, characterized as "the radical tailor of Charing Cross," was of those who accomplished much for the welfare of others. "Few men have done more of the world's work with so little external sign, * * * He was essentially a public man, but his work usually lay behind the curtain. * * * He loved quiet power for the purpose of promoting good ends."²³ A study of the life of Francis Place reveals the large influence he had in promulgating measures for improvement. Not in the halls of Parliament but amidst the workingmen with whom he associated were his arguments heard. In Bentham's estimation, Place, as early as 1816, "from extensive knowledge of the country and its parties, the conditions and wants of the people, and from his own probity and mental energy" was the most capable of any living man to be Secretary of State for the Home Department.²⁴

The friendship of Bentham and Brougham (1778-1868) was characterized by warmth and by criticism of each for the benefit of the other. Understanding and esteeming one another as they did for many years it is interesting to consider some of the phases in their intimacy. Under date of July 9, 1812, Bentham wrote of Brougham just after he had dined at Queen's Square Place: "He is already one of the first men in the House of Commons, and seems in a fair way of being very soon universally acknowledged to be the very first, even beyond my old and intimate friend, Sir Samuel Romilly: many, indeed, say he is so now."²⁵ At this time Brougham had been instrumental in having the Orders in Council revoked with the thought that peace and trade might be restored with America, and England was consequently filled "with joy, gladness, and returning plenty." Letters that have been kept for the year 1827 have as salutations on Bentham's part "My Dearest Best Boy," "Dear Sweet Granpapa" and the contents, friendly in the extreme, bring out

²² Wallas, *op. cit.*, p. 77.

²³ *Ibid.*, p. 1.

²⁴ *Ibid.*, p. 80.

²⁵ Bowring, *op. cit.*, X, p. 471.

Little Poppet," "My Dear Boy;" on Brougham's part "Dear the giving and receiving of advice. Replying to Bentham's offer of more advice Brougham said: "Many thanks for the *pap*, I am already *fat on it*. I did not acknowledge it, being busy eating it; and saying nothing at meals is the way with us little ones—when hungry."²⁶

The matters of especially great moment to these men were legal reform and education. That Brougham disappointed his friend and adviser in the former is shown by the statement under date of February 9, 1828: "Mr. Brougham's mountain is delivered, and behold!—a mouse. The wisdom of the reformer could not overcome the craft of the lawyer. Mr. Brougham, after all, is not the man to set up a simple, natural, and rational administration of justice against the entanglements and technicalities of our English law proceedings."²⁷ In the field of education, Brougham's work is commendable. His publication of *Observations on the Education of the People* in 1825 urging the necessity of increasing the knowledge of the poorer classes echoed ideas promulgated by Bentham in earlier years. In 1826 he organized "The Society for the Diffusion of Useful Knowledge." The attention he gave to better scientific education of the upper classes materially aided in the establishment of University of London in 1828.²⁸

Following his election to Parliament in 1830, Brougham strongly advocated electoral reform, urging the extension of the franchise to all householders, leaseholders, and copyholders, and the reduction of representation of each "rotten borough" by one member.²⁹ His speech on the bill which became the Reform Bill of 1832, classed as his masterpiece, was full of sarcasm against the Tory lords and was in marked contrast to his attitude in 1818.

Bentham in 1828 speaking of Brougham said that although he was insincere it was always worth while "to bestow a day on him."³⁰ In March of 1830, displeased because Brougham had failed to measure up to the desired standard, Bentham address-

²⁶ *Ibid.*, pp. 575-576.

²⁷ *Ibid.*, p. 588.

²⁸ Oliphant, *The Victorian Age of English Literature*, I, p. 20.

²⁹ *Dictionary of National Biography*, V, p. 453.

³⁰ Bowring, *op. cit.*, X, p. 571.

ed a letter to him under the caption of "To Master Henry Brougham." Following a long introduction in the query, "When will you have learnt your primer? When will you be able to spell 'greatest-happiness principle; non-disappointment principle; ends of justice—main end, giving execution and effect to the substantive branch of the law; * * * ?'"³¹

The correspondence of Bentham and Burdett (1770-1844) reveals cordial and helpful friendship. Through it one gains first-hand knowledge of the manner in which the influence of the Hermit Philosopher found its way into Parliament. Selecting letters written at intervals between 1811 and 1830, one notes the forms of Bentham's salutations: *e. g.*, May, 1811, "Dear Sir;" October, 1819, "Much Esteemed Disciple;" June, 1825, "My Dear Burdett;" also of Burdett's, February, 1818, "My Dear Sir;" June 1825, "My Ever Revered, Beloved, and on this Side Idolatry, Worshipped Master, Jeremy Bentham."³² These salutations, with statements made by others who were contemporaries, show that the two men were, without question, congenial and delightful companions.³³ The substance of the letters varies from dinner invitations to serious discussions upon parliamentary reform.³⁴ With reference to the latter topic the friendship of the two men was indeed significant, for as a result of the letters bearing upon that discussion, resolutions which Bentham drafted were presented by Burdett in Parliament. In the early part of 1818 Burdett writing to Bentham requested him to draw up a bill for parliamentary reform.³⁵ Replying to this letter very soon Bentham expressed frankly his ideas relative to reform and the necessity of carefully surveying the task before undertaking it.

February 25, 1818, Henry Bickersteth, distinguished friend of both Bentham and Burdett, made plain the state of affairs: "In the contemplation of any improvement in politics or legislation, it is obvious that the possession of an instrument of amelioration, sufficiently powerful and enlightened, is a condition without which no hope of success can be entertained; and, in the

³¹ *Ibid.*, XI, pp. 36-37.

³² *Ibid.*, X, pp. 460, 503, 550, 493, 551.

³³ *Ibid.*, X, p. 493.

³⁴ *Ibid.*, XI, p. 50, 491-497.

³⁵ *Ibid.*, X, p. 491.

present circumstances of England, it is equally clear, that sufficient power, united with sufficient knowledge and rectitude of intention can only be found in a radically reformed Parliament, after some further time has been allowed for public instruction. If Parliament were reformed today, we should have power and upright intention; but unless we had also a more general and familiar knowledge of the principles of legislation than now exists, it might justly be apprehended, that, in many cases, mere ignorance of what was right to be done, would produce the same effects which we now suffer under the influence of vice. It appears therefore, that two things are to be considered—parliamentary reform, without which no general good can be done; and public instruction, which is necessary, first, as a means of obtaining reform, and secondly, as a means of reaping the greatest possible benefit from reform when obtained. Upon the last, it is not necessary to say more on the present occasion.

“Reform can be peaceably obtained only by the pressure of public opinion, acting with continually increasing uniformity and weight in favor of the cause. * * *

“Now England possesses two distinguished friends of reform, who, by their joint labours, are able to give the most advantageous promulgation to the best possible plan. The characters of Mr. Bentham and Sir Francis Burdett are too well known to each other to make it necessary or proper to say anything on that subject. Of the great work to be done, the one is, more than any other person, capable of performing that part which is least congenial to the habits of the other; and their united exertions could not fail to be eminently beneficial. Conceive a plan of reform drawn up by Mr. Bentham—the best possible, because framed by the person best qualified; and promulgated and supported by Sir Francis Burdett—the most advantageously, because by the person whose every word becomes universally notorious, and excites universal interest and attention; and the following are among the advantages to be derived from it:—

1. A light held up for the guidance of all friends of reform,
2. An effectual moral shield against all enemies.
3. General confidence that the plan was the best that circumstances would permit.
4. A suppression of minor differences of opinion, in favor of a plan so sanctioned, and consequent approaches to

uniformity. 5. Petitions for the adoption of a particular plan, which could not be reasonably controverted.

"Whatever may be proposed, the parliamentary debates afford the most extensive means of publication; and it seems probable that the best mode of stating a plan of reform would be—to propose a few short and simple resolutions, asserting the principal abuses complained of, and setting forth the more general regulations, constituting the intended remedy—with an indication that a bill, or a complete system of resolutions or propositions, preliminary to the enactment of a law for the establishment of the entire remedy, was prepared and ready to be proposed on the adoption of the first resolutions. From the proposal follows a debate, every word of which might be recorded and published, with critical and explanatory notes, and an appendix, containing the bill, or system of propositions, comprehending the details of the plan. If the names of Bentham and Burdett went together in this proceeding, we should not only have a universal notoriety, but all the reflection and sagacity, as well as all the active zeal in the kingdom, would be called into immediate action on this subject; and it would be surprising indeed, if every succeeding year did not produce an increasing weight of petitions. The most profound philosophy cannot unite in vain with the greatest popularity of the time."³⁶

Upon the same day Burdett wrote to Bentham assuring him that he would do all that he could to support in the House any resolutions Bentham might draft: "I shall not only be happy, but proud to use every exertion in my power, to tax all my faculties to the utmost, in order to carry into effect your wishes upon this great and important subject. My tongue shall speak as you do prompt mine ear; and I will venture to promise, knowing so well whom I promise, that I will refuse attempting no one thing that you shall say ought to be done. My first reward will be the hope of doing everlasting good to my country; my next, and only inferior to it, that of having my name linked in immortality with that of Jeremy Bentham; and though, to be sure, it is but a tomtit mounted on an eagle's wing, the thought delights me."³⁷ Following further correspondence between Bentham and Burdett, a sentence from one of the latter's letters

³⁶ *Ibid.*, X, pp. 492-493.

³⁷ *Ibid.*, X, p. 494.

dated March 10, 1818, is: "Please to transmit the resolutions to me."³⁸

Burdett presented in the House of Commons on June 2, 1818, the resolutions drafted by Bentham. He added historical material to some of the twenty-six paragraphs that introduced the six resolutions and he re-arranged the order of the resolutions.³⁹

The six resolutions drafted by Bentham were:

"I. That it is expedient and necessary to admit to a participation in the election suffrage, all such persons as, being of the male sex, of mature age, and of sound mind, shall, during a determinate time antecedent to the day of election, have been resident either as householders or inmates, within the district or place in which they are called upon to vote.

II. That for securing the freedom of election, the mode of voting ought to be by ballot.

III. That for more effectually securing the unity of will and opinion, as between the people and their representatives, a fresh election of the members of this House ought to take place, once in every year at least; saving to the Crown its prerogative of dissolving Parliaments at any time, and thereupon, after the necessary interval, summoning a fresh Parliament.

IV. That the territory of Great Britain and Ireland taken together ought to be divided into 658 election districts, as nearly equal to each other in population as consistently with local convenience they may be; and that each such election ought to return one representative, and no more.

V. That for the prevention of unnecessary delay, vexation, and expense, as well as of fraud, violence, disorder, and void elections, the election in each district ought to be begun and ended on the same day;⁴⁰ and that for this purpose, not only the proof of title, but also every operation requiring more time than is necessary for the delivery of the vote, ought to be accomplished on some day, or days, antecedent to the day of election, and that the title to a vote should be the same for every elector, and so simple as not to be subject to dispute.

VI. That for the more effectually securing the attainment of the above objects, the election districts ought to be subdivided

³⁸ *Ibid.*, X, p. 495.

³⁹ *Ibid.*, IV, p. 568.

⁴⁰ Compare the Great Reform Act of February 6, 1832.

into sub-districts, for the reception of voteés, in such number and situations as local convenience may require.”⁴¹

The debate in Parliament on the Bentham-Burdett bill was long and interesting, being participated in by Lord Cochrane, Lord Brougham, Mr. Parnell, Mr. Canning, Mr. Lamb and Mr. Smith.⁴² The arguments for and against the resolutions manifested the views of the radical reformer, the moderate reformer, the Whig, and the Tory. From Brougham’s speech extracts that attract attention are: “As for universal suffrage, or the doctrine which severed the elective franchise altogether from property, he begged leave to observe that he never had at any time held it as less than the utter destruction of the Constitution; he need not add that he had never given it the slightest countenance or support.” And “the empiric who pretended at once to eradicate every evil in the system, and the flatterer who affected to believe that no change at all was wanting, were equally dangerous guides in state affairs, and that the one was as incapable of effecting a salutary reform as the other.”⁴³ Referring to Mr. Bentham as an advocate of universal manhood suffrage Lord Brougham said: “He had the greatest respect for that gentleman. There existed not a more honest or ingenuous mind than he possessed. He knew no man who had passed a more honorable and useful life. Removed from the turmoil of active life, voluntarily abandoning both the emoluments and the power which it held out to dazzle ambitious and worldly minds; he had passed his days in the investigation of the most important truths, and had reached a truly venerable, although he hoped not an extreme age. To him he meant not to impute either inadequate information, or insufficient industry, or defective sagacity. But he hoped he would not be deemed disrespectful towards Mr. Bentham if he said that his plan of parliamentary reform showed that he had dealt more with books than with men.”⁴⁴

In his reply, Burdett said that Brougham’s speech was characterized by eloquence “but was certainly very far from being convincing.” It “was a sort of salmagundi of sarcasm, panegyric, and verbosity, of exaggeration and misinterpretation, in

⁴¹ Bowring, *op. cit.*, X, p. 497.

⁴² Hansard, *Parliamentary Debates*, XXXVIII, pp. 1150-1186.

⁴³ *Ibid.*, XXXVIII, pp. 1163-1169.

⁴⁴ *Ibid.*, XXXVIII, p. 1164.

which the words were more abundant than the ideas, the irony more conspicuous than the argument." Burdett systematically answered the points of various opponents and stated: "All the wholesome provisions which had been made for the protection of the people, had been violated, set at nought, and buried in the corruption of the House of Commons, neglecting the voice, and not regarding the interests of the people." He pointed out particularly that Brougham, claiming to be friendly to reform, "had, at the same time, attempted to render ridiculous the ablest advocate which reform had ever found—the illustrious and unrivalled Bentham. It was in vain, however, for the honorable and learned gentleman to attempt, by stale jokes and misapplied sarcasm, to undervalue the efforts of a mind the most comprehensive, informed, accurate, acute and philosophical, that had perhaps in any time or in any country been applied to the subject of legislation and which, fortunately for mankind, had been brought to bear upon reform, the most important of all political subjects. The abilities of Bentham, the honorable and learned gentleman could not dispute—his disinterestedness he could not deny—his benevolence he could not but admire—his unremitted labours, he would do well to respect and not to attempt to disparage. The conviction of such a mind, after mature investigation, overcoming preconceived prejudice, could not be represented as the result of wild and visionary speculation; and the zealous and honest adherents of the cause of reform might be well contented to rest the question on the foundation, broad and deep, upon which Bentham had placed it. The honorable and learned gentleman, therefore, unless he found himself competent at least to attempt to answer the reasons of Bentham, ought, for his own sake, to be more cautious how he endeavored to misrepresent those reasons, or to effect, by misstatement, what he was unable to accomplish by argument."⁴⁵

Although these resolutions did not pass into law in 1818, one does not find it difficult to understand that the debate and discussion lent large influence to the passage of the Bill of 1832. Lord Cochrane's statement, opening the debate, was really prophetic. "He would not, he could not anticipate the success of that motion; but he would say, as had been before said by the great

⁴⁵ *Ibid.*, XXXVIII, pp. 1180, 1182-1183.

Chatham, the father of Mr. Pitt, that if the House did not reform itself from within, it would be reformed with a vengeance from without. The people would take the subject up, and a reform would take place which would make many members regret their apathy in refusing that reform which might be rendered efficient and permanent."⁴⁶

October 24, 1831, Bentham wrote a message to Lady Hannah Elice, in which he said: "The way to be comfortable is to make others comfortable. The way to make others comfortable is to appear to love them. The way to appear to love them—is to love them in reality."⁴⁷ Writing this at a time so near the close of his life he expressed the dominating factor of his philosophy. Invitations to dine at Queen's Square Place were extended to special friends and were duly appreciated by the recipients. February 4, 1832, Burdett wrote, in accepting an invitation, "Hassan, the camel-driver, was not more delighted when, traveling o'er the desert, he received on his parched lips a drop of water from heaven, than I am at receiving your kind, and allow me to call it, affectionate invitation; for I value your good opinion and esteem beyond that of the million far. I know nothing of the honours you suppose are waiting me, and I assure you, in perfect sincerity of heart, I care nothing; but of this and other more interesting matters when we meet, which, God willing, shall be Sunday, for I put aside every consideration to have that pleasure."⁴⁸

Always laboring under the handicap of shyness Bentham did not go often as a guest to the homes of others, but he surrounded himself "with persons whose sympathies were like his own, and whose sympathies he might direct to their appropriate objects in the active pursuits of life. * * * While he availed himself of every means in his power of forming and cherishing a friendship with whoever in any country indicated remarkable benevolence; while Howard was his intimate friend—a friend delighted alike to find and to acknowledge in him a superior and beneficent genius; while Romilly was not only the advocate of his opinions in the Senate, but the affectionate and beloved disciple in private; while for the youth LaFayette, his junior contemporary,

⁴⁶ *Ibid.*, XXXVIII, p. 1150.

⁴⁷ Bowring, *op. cit.*, XI, p. 71.

⁴⁸ *Ibid.*, XI, p. 74.

he conceived an affection which in the old age of both was beautiful for the freshness and ardour with which it continued to glow; while there was no name in any country known and dear to Liberty and Humanity which was not known and dear to him, and no person bearing such a name that ever visited England who was not found at his social board, he would hold intercourse with none of any rank or fame whose distinction was unconnected with the promotion of human improvement, and much less whose distinction arose from the zeal and success with which they laboured to keep back improvement. That the current of his own benevolence might experience no interruption or disturbance, he uniformly avoided engaging in any personal controversy; he contended against principles and measures, not men; and for the like reason he abstained from reading the attacks made upon himself, so that the ridicule and scoffing, the invective and malignity, with which he was sometimes assailed, proved as harmless to him as to his cause. By the society he shunned, as well as by that which he sought, he endeavored to render his social intercourse subservient to the cultivation, to the perpetual growth and activity, of his benevolent sympathies."⁴⁹

It may not be amiss to note the opinion of a Spanish admirer of Bentham, an *alcalde* of Galicia. Conversing one day with George Borrow who spent the years from 1835 to 1840 in Spain, the *alcalde* spoke of Bentham as the "grand Baintham," "the most universal genius which the world ever produced;—a Solon, a Plato, and a Lope de Vega." Borrow said he had not thought Bentham could be ranked as a poet. The *alcalde*'s reply was significant: "How surprising! I see, indeed, that you know nothing of his writings, though an Englishman. Now, here am I, a simple *alcalde* of Galicia, yet I possess all the writings of Baintham on that shelf, and I study them day and night."⁵⁰

An invitation that Bentham wrote to Talleyrand in February, 1832, reads in part: "Prince!—Do you want an appetite? The means of finding one for Friday next, is to come to this retreat, and take a Hermit's dinner on Thursday. I say on Thursday; for thus, Bowring, whose house looks upon my garden, may

⁴⁹ *Ibid.*, XI, p. 92.

⁵⁰ Borrow, *The Bible in Spain*, p. 289.

enjoy your society for a few moments; that is to say, after dinner; for during dinner we must be tête-à-tête, which will be the only way of making ourselves known to each other; I give my mornings to nobody. I have so much to do, and so short a time to live, that I cannot abridge my working hours."⁵¹ These two men had not met for forty years and the keen delight of the French diplomatist was manifested in one sentence of his reply: "To dine with Bentham;—that is a pleasure which tempts me to break an engagement I have been under for several days." Bowring states that Talleyrand regarded Bentham as "preëminently a genius—more entitled to the name than any man he had ever known," and "that all modern writers, Bentham was the one from whom most had been stolen—and stolen without acknowledgment." Also, "*et, pillé de tout le monde, il est toujours riche.*"⁵²

Etienne Dumont (1759-1829), the leading disciple of Bentham and the great expositor of Benthamic philosophy, was a Swiss philosopher, scholarly, widely travelled, of superior talents, liberal sentiments, and fine character. He became tutor to Lord Lansdowne's son Henry in 1785. Esteemed by the Whigs he soon became a close friend of Romilly. He met Bentham at Bowood in 1788 and, after returning to England from France in 1791, became intimate with Bentham. Romilly showed Dumont some of Bentham's manuscripts and Dumont comprehending the great worth of them offered to edit the writings. Of this Bentham says "the plan was that *Dumont* should take my half-finished manuscripts as he found them—half English, half English-French, and make what he could of them in Genevan-French, without giving me any further trouble about the matter. Instead the lazy rogue comes to me with everything that he writes, and teases me to fill up every gap he has observed."⁵³ Leslie Stephen says that Dumont, becoming Bentham's most devoted disciple labored without ceasing upon his master's works.⁵⁴ Abridging, elucidating, correcting, simplifying, he was engaged for years with Bentham's ever-increasing writings.

The results of Dumont's effort received a currency that great-

⁵¹ Bowring, *op. cit.*, XI, p. 75.

⁵² *Ibid.*, XI, p. 75.

⁵³ *Ibid.*, X, p. 313.

⁵⁴ Stephen, *op. cit.*, I, p. 187.

ly aided in spreading the influence of Bentham's writings. From time to time the following appeared: 1802, *Traité de Législation Civile et Pénale*; 1811, *Théorie des Peines et des Récompenses*; 1816, *Tactique des Assemblées Législatives*; 1823, *Preuves Judiciaire*; 1828, *Organization Judiciaire et Codification*. As a commentary upon this work of master and disciple is Macaulay's statement: "The literature of France has been to ours what Aaron was to Moses, the expositor of great truths which would else have perished for want of a voice to utter them with distinctness. The relation which existed between Mr. Bentham and Dumont is an exact illustration of the intellectual relations in which the two countries stand to each other. The great discoveries in physics, in metaphysics, in political science are ours. But scarcely any foreign nation except France has received them from us by direct communication. Isolated by our situation, isolated by our manners, we found truth, but we did not impart it. France has been the interpreter between England and mankind."⁵⁵

James Mill (1773-1836), by Leslie Stephen called Bentham's lieutenant,⁵⁶ was of humble birth, his father being a shoemaker, his mother, a farmer's daughter. Educated in the parish school of Logie-Perth, the Montrose Academy, and the Edinburgh University, he was licensed to preach in the Church of Scotland in 1798. He did not follow the work of a divine but gave his attention to historical, political, and philosophical lines of work. Davidson classed Mill as the most strenuous, the ablest, and most uncompromising disciple of Bentham.⁵⁷ These two philosophers became acquainted in 1808 and their acquaintance ripened into warm and lasting friendship. Mill was often a dinner guest at Queen's Square Place walking over from Pentonville, but, because the elder man wished to have him nearer, in 1810 Mill moved into one of Bentham's houses. A little later Mill lived for a time at Stoke Newington but in 1814 moved into another one of his friend's houses very near to Queen's Square Place. Then the two lived in most congenial intimacy for a number of years. For months at a time in successive years, Mill and his family were Bentham's guests at Barrow Green and

⁵⁵ Macaulay, *Works*, (Edinburgh edition) VI, p. 8.

⁵⁶ Stephen, *op. cit.*, I, p. 7.

⁵⁷ Davidson, *Political Thought in England*, p. 114.

Ford Abbey.⁵⁸ Out of these conditions "the intercourse between the two men gave rise to a close friendship, and produced on the mind of the older philosopher an impress comparable in extent and endurance, with that received more than a quarter of a century earlier amidst the scenes of the first visit to Bowood."⁵⁹

According to Bowring the traits of Mill's mind were "not amiable, but most sagacious—impatient of contradiction or of check, but penetrating and philosophical. No man ever reasoned with stronger logical powers—no man had ever a more accurate perception of truth, or a more condensed form of expression. No man was ever more efficient as a controversialist, or more felicitous in the exposure of a fallacy or a flaw."⁶⁰ Perhaps it was because Mill lacked the gentleness and the sensitive tenderness of Bentham that the two men understood each other better. "He argues against oppression less because he loves the oppressed many than because he hates the oppressing few. He fights for the people—not that he cares for the suffering people, but that he cannot tolerate the suffering-creating rulers."⁶¹ Their warm friendship did not prevent Bentham from freely criticising Mill.⁶²

Mill, the psychologist, the philosopher, the educator, "brought a vigorous intellect to grasp and to develop the doctrines of his master. To a great extent he popularized them. He has been reproached with having habitually neglected to acknowledge the source from whence he derived his inspirations, and to have given to the world as his own the valuable matter which he drew from his great instructor. But the accusation has been exaggerated—for, though the *Utilitarian Philosophy* is the ground work for all the writings of Mill—these writings are full of original views, and occupy many portions of the field of thought which had not so specially engaged the attention of Bentham."⁶³

Mention has been made of Bentham's attitude relative to education for all classes of mankind. Mill's attitude upon this subject was clearly evidenced in his article entitled "Educa-

⁵⁸ Bowring, *op. cit.*, X, pp. 482, 483.

⁵⁹ Atkinson, *op. cit.*, p. 154.

⁶⁰ Bowring, *op. cit.*, X, p. 482.

⁶² *Ibid.*, X, p. 450.

⁶³ *Ibid.*, X, p. 449.

tion," in which he defined education as "the best employment of all the means which can be made use of, by man, for rendering the human mind to the greatest possible degree the cause of human happiness. Everything, therefore, which operates, from the first germ of existence to the final extinction of life, in such a manner as to affect those qualities of the mind on which happiness in any degree depends, comes within the scope of the present inquiry."⁶⁴ In this essay, Mill clearly showed from the standpoint of utility what a large factor in man's well-being, education is. Mill taught in a forceful manner the ideas of Bentham relative to education in his emphasis of the happiness element, not as a selfish motive, but as the means of general welfare.

Mill was an enthusiastic supporter of law reform and his writings indicate careful and exhaustive thinking upon it. His *Jurisprudence* develops the following subjects: Rights, Punishments for Wrongs, Constitution of Tribunals, Mode of Procedure in the Tribunals. "The treatment is fresh and vigorous, but does not, to any large extent, advance beyond Bentham."⁶⁵

It is interesting to note here that Bentham had set forth in his essay on "Universal and Perpetual Peace" the plan of an international tribunal for England and France.⁶⁶ Stating that complicated conventions had reached solution in the American Confederation, the German Diet and the Swiss League, he asked: "Why should not the European fraternity subsist as well as the German Diet or the Swiss League?" Mill made an additional contribution to the idea of international jurisprudence by pointing out that nations are bound by the international laws as men are bound by the code of honor. The voice of the true utilitarian was heard in Mill's advocacy of an international tribunal. "Given a properly constituted tribunal, duly representative of the nations, dealing impartially with the cases brought before it for decision, and given the decisions and proceedings of the tribunal made publicly known and promulgated throughout all the countries of the civilized world, then the general utility of such a body would very readily be seen and its power felt. It would soon be discovered that many kinds of

⁶⁴ Davidson, *op. cit.*, p. 128.

⁶⁵ *Ibid.*, p. 147.

⁶⁶ Bowring, *op. cit.*, II, p. 552.

international disputes would be more satisfactorily determined by an appeal to the tribunal than by the hot-headed arbitration of the sword.⁶⁷

The *summum bonum* of Bentham's teachings was seen in Mill's world-wide view as mentioned by Davidson: "Mill had a vision of the world at amity, each subordinating its own interests to the interests of the whole, and, therefore, each content to mind its own concerns without unduly interfering with the concerns of its neighbors, or wishing to lay hold of its neighbor's territory. The principle of utilitarianism was supreme with him, and he necessarily deprecated anything national that would be of a selfish or individualistic character, anything that would be incompatible with the interests of the nations in general, or, at least, of the civilized nations, which presumably, in the long run, means that of the uncivilized nations too."⁶⁸

Lansdowne, Romilly, Place, Brougham, Burdett, Dumont, Mill,—a group of seven men, some directly influential in Parliament, some very influential outside of Parliament, all influential in behalf of the welfare of mankind, employed the theories of Jeremy Bentham in their plans of reform. Lansdowne, credited with causing Bentham to develop his ideas; Place, classed as one who spread among his co-workers specified ideas of reform and known because of his friendship with Bentham; Romilly, Burdett, Brougham and Mill, listed as decided up-builders of reform strongly in accord with Bentham's views, accomplished much definite good as the historical records of the past century manifest; and Dumont, selected as the editor of some of Bentham's voluminous works, was responsible for the wide dissemination of those excellent writings. These men formed a worthy septette of disciples of Bentham.

It is not possible to say, with exactness, just what Bentham's influence, direct and indirect, has been in bringing about many changes that have resulted in man's betterment; it is not possible to estimate with precision just what his influence, direct and indirect, has been in aiding reform in legislative, judicial, and social matters; it is not possible to assess the merit that is due to him through the employment of his theories in the various places where they can be traced. However, the thinking mind

⁶⁷ Davidson, *op. cit.*, p. 152.

⁶⁸ *Ibid.*, p. 454.

easily comprehends that English democratic legislation, as it has moved forward during the past century, is largely stamped with his impress.⁶⁹ In very large measure the statement made by Governor Plumer of New Hampshire in a letter written to Bentham October 2, 1817, has come true: "Persevere, my dear Sir, in the great and important work in which you are so disinterestedly engaged. The world, if not now, at some future period, will profit by your labours—and though immediate success may not follow, you yourself will enjoy the noble consciousness of having faithfully served the best interests of society—and a rational prospect that sound principles will eventually prevail."⁷⁰

⁶⁹ Burton: *Introduction to the Study of the Works of Jeremy Bentham*, p. 3, footnote. Among the various reforms suggested by Bentham, the following are instances in which his views have been partially, or wholly adopted by the legislature:—reform in the representative system; municipal reform in the abolition of exclusive privileges; mitigation of the criminal code; the abolition of transportation, and the adoption of a system of prison discipline adapted to reformation, example, and economy; removal of defects in the jury system; abolition of arrest in mesne process; substitution of an effectual means of appropriating and realizing a debtor's property for the practice of imprisonment; abolition of usury laws; abolition of oaths; abolition of law taxes and fees in courts of justice; removal of the exclusionary rules in evidence; repeal of the test and corporation acts; repeal of the Catholic disabilities acts, and other laws creating religious inequalities; abolition or reduction of the taxes on knowledge; a uniform system of Poor Laws under central administration, with machinery for the eradication of mendicancy and idleness; a system of training pauper children, calculated to raise them from dependent to productive members of society; saving banks and friendly societies on a uniform and secure system; postage cheap, and without a view to revenue; post-office money orders; a complete and uniform register of births, marriages, and deaths; a register of merchant seamen, and a code of laws for their protection; population returns, periodical, and on a uniform system, with the names, professions, etc. of individuals; the circulation of parliamentary papers as a means of diffusing the information contained in them; protection to inventions without the cumbrous machinery of the patent laws; free trade; national educational system; secret ballot; universal suffrage sanitary regulations; practical uniformity of electoral districts, voting period limited to a single day; and finally the promulgation of a league of nations for universal peace.

⁷⁰ Bowring, *op. cit.*, IV, p. 577.

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